

THIRD DIVISION

[G.R. No. 137471, January 16, 2002]

**GUILLERMO ADRIANO, PETITIONER, VS. ROMULO PANGILINAN,
RESPONDENT.**

DECISION

PANGANIBAN, J.:

Loss brought about by the concurrent negligence of two persons shall be borne by the one who was in the immediate, primary and overriding position to prevent it. In the present case, the mortgagee -- who is engaged in the business of lending money secured by real estate mortgages -- could have easily avoided the loss by simply exercising due diligence in ascertaining the identity of the impostor who claimed to be the registered owner of the property mortgaged.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the November 11, 1998 Decision^[1] of the Court of Appeals (CA) in CA-GR CV No. 44558. The dispositive portion of the CA Decision reads as follows:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED and SET ASIDE, and another entered dismissing the complaint instituted in the court below. Without costs in this instance."^[2]

Also questioned is the February 5, 1999 CA Resolution^[3] denying petitioner's Motion for Reconsideration.

The CA reversed the Regional Trial Court (RTC) of San Mateo, Rizal (Branch 76) in Civil Case No. 845, which disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the real estate mortgage constituted on the property described in and covered by TCT No. 337942 of the Registry of Deeds for the Province of Rizal, in the name of Guillermo Adriano, to be null and void and of no force and effect, and directing defendant Romulo Pangilinan to reconvey or deliver to herein plaintiff Guillermo Adriano the aforesaid title after causing and effecting a discharge and cancellation of the real estate mortgage annotated on the said title. No pronouncement as to costs.

"Defendant's counterclaim is dismissed for want of basis."^[4]

The Facts

The undisputed facts of the case are summarized by the Court of Appeals as follows:

"[Petitioner] Guillermo Adriano is the registered owner of a parcel of land with an area of three hundred four (304) square meters, more or less, situated at Col. S. Cruz, Geronimo, Montalban, Rizal and covered by Transfer Certificate of Title No. 337942.

"Sometime on November 23, 1990[, petitioner] entrusted the original owner's copy of the aforesaid Transfer Certificate of Title to Angelina Salvador, a distant relative, for the purpose of securing a mortgage loan.

"Without the knowledge and consent of [petitioner], Angelina Salvador mortgaged the subject property to the [Respondent] Romulo Pangilinan. After a time, [petitioner] verified the status of his title with the Registry of Deeds of Marikina, Metro Manila, and was surprised to discover that upon the said TCT No. 337942 was already annotated or inscribed a first Real Estate Mortgage purportedly executed by one Guillermo Adriano over the aforesaid parcel of land, together with the improvements thereon, in favor of the [Respondent] Romulo Pangilinan, in consideration of the sum of Sixty Thousand Pesos (P60,000.00). [Petitioner] denied that he ever executed the deed of mortgage, and denounced his signature thereon as a forgery; he also denied having received the consideration of P60,000.00 stated therein.

"[Petitioner] thereafter repeatedly demanded that [respondent] return or reconvey to him his title to the said property and when these demands were ignored or disregarded, he instituted the present suit.

"[Petitioner] likewise filed a criminal case for estafa thru falsification of public document against [Respondent] Romulo Pangilinan, as well as against Angelina Salvador, Romy de Castro and Marilen Macanaya, in connection with the execution of the allegedly falsified deed of real estate mortgage: this was docketed as Criminal Case No. 1533-91 of the Regional Trial Court of San Mateo, Rizal, Branch 76.

"[Respondent] in his defense testified that he [was] a businessman engaged in the buying and selling as well as in the mortgage of real estate properties; that sometime in the first week of December, 1990 Angelina Salvador, together with Marilou Macanaya and a person who introduced himself as Guillermo Adriano, came to his house inquiring on how they could secure a loan over a parcel of land; that he asked them to submit the necessary documents, such as the owner's duplicate of the transfer certificate of title to the property, the real estate tax declaration, its vicinity location plan, a photograph of the property to be mortgaged, and the owner's residence certificate; that when he conducted an ocular inspection of the property to be mortgaged, he was there met by a person who had earlier introduced himself as Guillermo Adriano, and the latter gave him all the original copies of the required documents to be submitted; that after he (defendant) had verified from the Registry of Deeds of Marikina that the title to the property to be mortgaged was indeed genuine, he and that person Guillermo Adriano executed the subject real estate mortgage, and then had it notarized and registered with the Registry of Deeds. After that, the alleged owner, Guillermo Adriano, together with Marilou Macanaya and another person signed the

promissory note in the amount of Sixty Thousand Pesos (P60,000.00) representing the appraised value of the mortgage property. This done, he (defendant) gave them the aforesaid amount in cash.

"[Respondent] claimed that [petitioner] voluntarily entrusted his title to the subject property to Angelina Salvador for the purpose of securing a loan, thereby creating a principal-agent relationship between the plaintiff and Angelina Salvador for the aforesaid purpose. Thus, according to [respondent], the execution of the real estate mortgage was within the scope of the authority granted to Angelina Salvador; that in any event TCT No. 337942 and the other relevant documents came into his possession in the regular course of business; and that since the said transfer certificate of title has remained with [petitioner], the latter has no cause of action for reconveyance against him."^[5]

In his appeal before the CA,^[6] respondent contended that the RTC had erred (1) in holding that petitioner's signature on the Real Estate Mortgage was a forgery and (2) in setting aside and nullifying the Mortgage.

Ruling of the Court of Appeals

The CA ruled that "when a mortgagee relies upon a Torrens title and lends money in all good faith on the basis of the title standing in the name of the mortgagor, only to discover one defendant to be an alleged forger and the other defendant to have by his negligence or acquiescence made it possible for fraud to transpire, as between two innocent persons, the mortgagee and one of the mortgagors, the latter who made the fraud possible by his act of confidence must bear the loss."^[7]

It further explained that "even conceding for the sake of argument that the appellant's signature on the Deed of First Real Estate Mortgage was a forgery, and even granting that the appellee did not participate in the execution of the said deed of mortgage, and was not as well aware of the alleged fraud committed by other persons relative to its execution, the undeniable and irrefutable fact remains that the appellee did entrust and did deliver his Transfer Certificate of Title No. 337942 covering the subject property, to a distant relative, one Angelina Salvador, for the avowed purpose of using the said property as a security or collateral for a real estate mortgage debt of loan."^[8]

Hence, this present recourse.^[9]

The Issues

In his Memorandum,^[10] petitioner raises the following issues for our consideration:

I

"Whether or not consent is an issue in determining who must bear the loss if a mortgage contract is sought to be declared a nullity[;]

and

"Whether or not the Motion for Reconsideration filed by the petitioner before the Court of Appeals should have been dismissed[.]"^[11]

This Court's Ruling

The Petition is meritorious.

First Issue:

Effect of Mortgage by Non-Owner

Petitioner contends that because he did not give his consent to the real estate mortgage (his signature having been forged), then the mortgage is void and produces no force and effect.

Article 2085 of the Civil Code enumerates the *essential* requisites of a mortgage, as follows:

"Art. 2085. The following requisites are essential to the contracts of pledge and *mortgage*:

"(1) That they be constituted to secure the fulfillment of a principal obligation;

"(2) That the pledgor or *mortgagor be the absolute owner* of the thing pledged or mortgaged;

"(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for that purpose.

"Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. (1857)" (Italics supplied)

In the case at bar, not only was it proven in the trial court that the signature of the mortgagor had been forged, but also that somebody else -- an impostor -- had pretended to be the former when the mortgagee made an ocular inspection of the subject property. On this point, the RTC held as follows:

"The falsity attendant to the subject real estate mortgage is evidenced not only by herein plaintiff's vehement denial of having entered into that contract with defendant, but also by a comparison between the signature of the debtor-mortgagor appearing in the said mortgage contract, and plaintiff's signatures appearing in the records of this case. Even to the naked eye, the difference is glaring, and there can be no denying the fact that both signatures were not written or affixed by one and the same person. The falsity is further infe[r]able from defendant's admission that the plaintiff in this case who appeared in court [was] not the same person who represented himself as the owner of the property (TSN, pp. 7, 11, June 21, 1993 hearing) and who therefore was the one who signed the contract as the debtor-mortgagor."^[12]

The CA did not dispute the foregoing finding, but faulted petitioner for entrusting to Angelina Salvador the TCT covering the property. Without his knowledge or consent, however, she caused or abetted an impostor's execution of the real estate mortgage.

"Even conceding for the sake of argument that the appellee's signature on the Deed of First Real Estate Mortgage (Exh. B; Original Record, pp. 56-58) was a forgery, and even granting that the appellee did not participate in the execution of the said deed of mortgage, and was not as well aware of the alleged fraud committed by other persons relative to its execution, the undeniable and irrefutable fact remains that the appellee did entrust and did deliver his Transfer Certificate of Title No. 337942 (Exh. A; Original Record, pp. 53-55) covering the subject property, to a distant relative, one Angelina Salvador, for the avowed purpose of using the said property as a security or collateral for a real estate mortgage debt of loan. x x x"^[13]

Be that as it may, it is clear that petitioner – who is undisputedly the property owner -- did not mortgage the property himself. Neither did he authorize Salvador or anyone else to do so.

In *Parqui v. Philippine National Bank*,^[14] this Court affirmed the trial court's ruling that a mortgage was invalid if the mortgagor was not the property owner:

"After carefully considering the issue, we reach the conclusion that His Honor's decision was correct. One of the essential requisites of a valid mortgage, under the Civil Code is 'that the thing pledged or mortgaged be owned by the person who pledges or mortgages it' (Art. 1857, par. 2); and there is no question that Roman Oliver who pledged the property to the Philippine National Bank did not own it. The mortgage was consequently void."^[15]

Second Issue: **Concurrent Negligence of the Parties**

The CA reversed the lower court, because petitioner had been negligent in entrusting and delivering his TCT No. 337942 to his "distant relative" Angelina Salvador, who undertook to find a money lender. Citing *Blondeau v. Nano*^[16] and *Philippine National Bank v. CA*,^[17] it then applied the "bona fide purchaser for value" principle.

Both cases cited involved individuals who, by their negligence, enabled other persons to cause the cancellation of the original TCT of the disputed property and the issuance of a new one in their favor. Having obtained TCTs in their names, they conveyed the subject property to third persons, who in *Blondeau* was a *bona fide* purchaser while in *Philippine National Bank* was an innocent mortgagee for value. It should be stressed that in both these cases, the seller and the mortgagor were the registered owners of the subject property; whereas in the present case, the mortgagor was an impostor, not the registered owner.

It must be noted that a Torrens certificate "serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein."^[18]