

## **SPECIAL TWENTIETH DIVISION**

**[ CA-G.R. CEB CV NO. 04119, July 18, 2014 ]**

**LOLITA S. NICDAO, PLAINTIFF-APPELLEE, VS. STAR ASIAN LENDING, INC., ESTER S, UY, DAVID S. NICDAO, IVY C. VILLACERAN AND THE REGISTER OF DEEDS OF CEBU CITY, DEFENDANTS-APPELLANTS.**

### **D E C I S I O N**

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated September 30, 2011 of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 14, Cebu City, granting the complaint of plaintiff-appellee Lolita Nicdao in the case docketed as Civil Case No. CEB-37258 for the Annulment of Special Power of Attorney, Real Estate Mortgage and Damages with Application for Temporary Restraining Order/Preliminary Injunction.

#### The Facts

Plaintiff-appellee, Lolita S. Nicdao [Lolita] is the owner of a 950 square meter parcel of land located at Fulton Street, Lahug, Cebu City, registered as TCT No.T-82933. In the same lot stood her residential house. Defendant, David Nicdao [David] is her nephew but he grew up with her and she raised him like her own child.

David was under her care until he decided to live with his common-law-wife Ivy C. Villaceran [Ivy]. Sometime during the first week of October 2009, David visited Lolita and suggested paying early the real estate tax of her property so that she could avail of a huge discount. Seeing David's suggestion to be advantageous, she thanked David and eagerly acceded to his idea. He then persuaded Lolita to give him the owner's copy of TCT No. T-82933 so that he could request for the computation from the City Treasurer's Office. Thinking nothing bad out of the request, Lolita gave the title to David.<sup>[2]</sup>

Unperceived by Lolita, David's intentions were different. David recounts that Ivy was heavily indebted to one SPO2 Castro in the amount of P4,000,000.00. When the demand to pay was served on her sometime in September 2009, she panicked. She consulted her lawyer friend Atty. Monsanto who advised her to just settle her obligation. Atty. Monsanto then confided to Ivy that her friend, a certain Allan, knows of a lending firm which would let her borrow money but she only needs to have a collateral. Thereupon, she started prodding David to use as collateral Lolita's property. David was persuaded when Ivy represented to him that she would immediately pay the loan so that he could promptly return the title.<sup>[3]</sup>

After David collected the title, together with Ivy, they again met with Atty. Monsanto and presented to her the title. After which, Atty. Monsanto introduced them to Allan. David and Ivy together with Allan went to Ester S. Uy [Ester], the owner of Star

Asian Lending, Inc. [SALI]. Ivy told Ester that she wants to borrow P3,000,000.00 and use as collateral TCT No. T-82933. Ester told her that she wants to inspect the property first and requested that they accompany her to the place.<sup>[4]</sup>

The following day, on July 6, 2009, David, Ivy, Allan, Ester and her son Ferdinand Uy went to Lolita's residence in order to conduct an ocular inspection. Lolita was in the living room with her sister Rose. When they arrived, Rose asked Ester and her son Ferdinand who they were and what was their purpose in going to their place but both of them did not answer her. It was only after Rose introduced herself and Lolita to them that Ester introduced themselves and told Rose that they were David's friends. Afterwards they all left Lolita's residence.<sup>[5]</sup>

They all proceeded to Ester's office where the latter instructed her secretary to prepare a Special Power of Attorney authorizing David to obtain a loan in behalf of Lolita. The SPA was then handed to Ivy. Allan alluded to them that he knows a good forger who is found in Banilad Cebu. Seeing the need to have the SPA signed, David and Ivy, accompanied by Allan all went to Banilad. When they reached the area, near Petron gasoline station, it was only Allan who continued to the interior portion thereof. When he returned, a signature was already affixed on top of Lolita's name in the SPA. Ester then instructed her secretary to accompany them to their lawyer, Atty. Hippocrates R. Rocina for the notarization of the SPA.<sup>[6]</sup>

After the SPA was notarized and the Real Estate Mortgage were signed, the loan was released on the same day and the proceeds thereof amounted to P2,595,000.00 only after the processing fee, acceptance fee and other fees were deducted. The SPA and the Mortgage were annotated on the title. Ivy in turn issued postdated checks for the payment of the loan. However, only four of the checks were good, the rest of the checks bounced.

Due to the default of payments, on September 20, 2010, Lolita received a demand letter from SALI, demanding from her to pay the loan which accumulated to P4,366,715.43 already. After receipt of the demand letter, the overwhelmed Lolita accompanied by her sister Rose consulted their lawyer who advised them to obtain the loan documents from SALI. After they got the necessary documents, except for the SPA which they obtained from David, Lolita through her lawyer responded to the demand letter stating that the SPA is a product of deceit and fraud.<sup>[7]</sup> Since Lolita refused to acknowledge the loan, Ester intimidated the former with the foreclosure of her property. Thus, Lolita filed the instant suit.

Ester in her answer vehemently denied the allegations in the complaint and at the outset claims that all these are just the scheme of David and Ivy to swindle them of their hard earned money. When the couple, who represented to them as being legally married went to their office, they were already armed with the SPA. Further, when they conducted the ocular inspection in order to appraise the property, Lolita herself who was there, even asked them to increase the loan to P4,000,000 but Ester promptly declined taking into consideration the market value and topography of the land, the maximum amount she could grant is only P3,000,000.<sup>[8]</sup>

She further asserts that she is entitled to foreclose the mortgage because the loan remained unpaid.

The RTC denied Lolita's prayer for a 72-hour TRO<sup>[9]</sup> but however granted her prayer for the issuance of a temporary restraining order.<sup>[10]</sup>

After the parties concluded with the presentation of their respective testimonial evidence, Lolita formally offered Exhibits "A" to "P"<sup>[11]</sup> and their sub-markings which were all admitted<sup>[12]</sup> by the RTC. On the other hand, SALI offered Exhibits "1"- "12"<sup>[13]</sup> and all their sub-markings which were all admitted<sup>[14]</sup> by the RTC.

The RTC rendered a Decision<sup>[15]</sup> on September 30, 2011, against SALI, the *fallo* of the decision, reads:

"WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of plaintiff as against all defendants, to wit:

1) The Special Power of Attorney allegedly executed by plaintiff in favor of defendant David Nicdao notarized by Notary Public Hippocrates R. Rocina and registered as doc. no. 496, Page No. 100, Book No. XXIV, Series of 2009 is declared NULL and VOID and of NO EFFECT; for this purpose, the Register of Deed(s) of Cebu City is ordered, on the finality of this Judgment, to CANCEL the Special Power of Attorney bearing Entry Nos. 2009001614-1 on plaintiff's Transfer Certificate of Title No. 82933;

2) The Real Estate Mortgage executed by David Nicdao as alleged attorney-in-fact of Lolita Nicdao, as mortgagor, in favor of the Star Asian Lending Inc., as mortgagee notarized by Notary Public Hippocrates R. Rocina as Doc. No. 15, Page No. 09, Book No. XXV, Series of 2009 is declared NULL and VOID; for this purpose, the Register of Deeds of Cebu City is ordered, on the finality of this Judgment, to CANCEL the Real Estate Mortgage bearing 2009001615-1 on plaintiff's Transfer Certificate of Title No. 82933;

3) All the defendants EXCEPT the Register of Deeds are solidarily liable to pay plaintiff the following amounts:

a) TWO HUNDRED THOUSAND (P200,000.00) PESOS, for and as moral damages;

b) ONE HUNDRED THOUSAND (P100,000.00) PESOS, for and as temperate damages;

c) ONE HUNDRED THOUSAND (P100,000.00) PESOS, for and as exemplary damages; and

d) FIFTY THOUSAND (P50,000.00) PESOS, for and (as) nominal damages.

Finally, let a permanent mandatory injunction be issued in favor of plaintiff against defendant for the latter NOT to disturb the property rights of the former.

All the defendants to pay the costs of these proceedings.

SO ORDERED.”

Thus, SALI on appeal, raised the following assignment of errors, to wit:

“I. THE LOWER COURT ERRED IN HOLDING THAT DEFENDANTS-APPELLANTS TOGETHER WITH DEFENDANTS DAVID NICDAO AND IVY VILLACERAN, TRICKED PLAINTIFF-APPELLEE;

II. THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT ESTER UY NOT ONLY FACILITATED BUT FORGED THE SIGNATURE OF PLAINTIFF-APPELLEE IN THE SPECIAL POWER OF ATTORNEY;

III. THE LOWER COURT ERRED IN HOLDING THAT THE SIGNATURE OF PLAINTIFF-APPELLEE ON THE SPECIAL POWER OF ATTORNEY IS FORGED;

IV. THE LOWER COURT ERRED IN NOT HOLDING THAT THIS IS A GRAND SCHEME OF PLAINTIFF-APPELLEE, DEFENDANTS DAVID NICDAO AND IVY VILLACERAN, TO SWINDLE THE DEFENDANTS-APPELLANTS OF THEIR HARD-EARNED MONEY;

V. THE LOWER COURT ERRED IN DECLARING THE SPECIAL POWER OF ATTORNEY AND REAL ESTATE MORTGAGE AS NULL AND VOID AND IN ORDERING THE REGISTER OF DEEDS TO CANCEL THE ANNOTATION BEARING ENTRY NOS. 2009001614-1 AND 2009001615-1 FROM TCT NO. 82933;

VI. THE LOWER COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT STAR ASIAN LENDING, INC. MUST SUFFER THE LOSS OF THREE MILLION PESOS (P3,000,000.00);

VII. THE LOWER COURT ERRED IN NOT HOLDING THAT PLAINTIFF-APPELLEE SHOULD SUFFER THE CONSEQUENCE OF ENTRUSTING HER TITLE TO DEFENDANT DAVID NICDAO;

VIII. THE LOWER COURT ERRED IN NOT HOLDING THAT DEFENDANT-APPELLANT STAR ASIAN LENDING IS A MORTGAGEE IN GOOD FAITH AND FOR VALUE;

IX. THE LOWER COURT ERRED IN AWARDING MORAL, TEMPERATE, EXEMPLARY AND NOMINAL DAMAGES TO THE PLAINTIFF-APPELLEE; AND

X. THE LOWER COURT ERRED IN NOT HOLDING THAT DEFENDANTS-APPELLANTS ARE ENTITLED TO THE PAYMENT OF ATTORNEY'S FEES AND EXPENSES OF LITIGATION IN DEFENDING THIS UNFOUNDED CIVIL ACTION.”<sup>[16]</sup>

### ***Our Ruling***

Summarizing the assignment of errors raised by SALI, it contends that the RTC

erred in declaring the Special Power of Attorney and the Real Estate Mortgage null and void. SALI asserts that Lolita, David and Ivy are united in their purpose to swindle money from the lending company because the assertion of Lolita that she is blind is rife with paucity considering that she owns an optical shop and when Ester went to her residence to conduct an ocular examination, she was healthy contrary to her bare assertions that she is weak and blind.

SALI belied the claim of Lolita that the company through Ester helped facilitate the forgery by bringing them to a forger, the truth being that the SPA brought by David to their office already had Lolita's signature affixed thereon. Assuming *arguendo* that David breached the trust and confidence reposed on him by Lolita, then Lolita must suffer the consequence of her negligence. In all, SALI asserts that the RTC should have declared it to be a mortgagee in good faith and for value. Lastly, SALI stated that the damages awarded have no basis in law and fact.

The parties in the instant case had different versions regarding the SPA. On one hand, Lolita claims she never signed the controverted SPA authorizing her nephew David to obtain a loan in her behalf therefore the said SPA is a product of forgery, on the other hand, SALI claims that when David and Ivy went to their office, David was already armed with said SPA.

We find that the confluence of the circumstances prove by preponderance of evidence that the controverted SPA was forged.<sup>[17]</sup>

It has long been settled in jurisprudence that forgery is not presumed from mere allegation but rather it must be established by clear and convincing evidence by the party making the allegation. In *Ladignon v. CA, et al.*,<sup>[18]</sup> the Supreme Court explained that in order to determine whether a signature is forged the following shall be the guideline, thus:

“The process of identification, therefore, must include the determination of the extent, kind, and significance of this resemblance as well as of the variation. It then becomes necessary to determine whether the variation is due to the operation of a different personality, or is only the expected and inevitable variation found in the genuine writing of the same writer. It is also necessary to decide whether the resemblance is the result of a more or less skillful imitation, or is the habitual and characteristic resemblance which naturally appears in a genuine writing. When these two questions are correctly answered the whole problem of identification is solved.”

While it is true that the testimonies of handwriting experts are not necessary, however, pursuant to the criteria enunciated in *Ladignon*, Lolita must not only show material differences between or among the signatures. In addition, (1) she must demonstrate the extent, kind, and significance of the variation; (2) she must prove that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer; and (3) she must show that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.<sup>[19]</sup> Otherwise put, following the said guideline, the best way to prove whether a signature is forged is through the testimony of a handwriting expert.