

THIRTEENTH DIVISION

[CA-G.R. CV NO. 93229, October 03, 2014]

**SPOUSES MARINA GASPAR AND VICTORINO RIVERA,
PLAINTIFFS-APPELLEES, VS. SPOUSES BERNABE AND LUISA
SANGGA, NIEVES ESGUERRA, MICHAEL SEPTIMO, PHILIPPINE
NATIONAL BANK, AND THE REGISTER OF DEEDS FOR THE
PROVINCE OF NUEVA ECIIJA, DEFENDANTS-APPELLANTS.**

DECISION

SADANG, J.:

Before the Court is an appeal from the Decision,^[1] dated August 14, 2008, of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 33, in Civil Case No. 1087-G.

Records show that on November 16, 1999, plaintiffs-appellees spouses Marina Gaspar and Victorino Rivera (hereafter, appellees) filed a Complaint^[2] against defendants-appellants spouses Bernabe and Luisa Sangga, Nieves Rivera Esguerra (Esguerra), Michael A. Septimo (Septimo), the Philippine National Bank (PNB), and Register of Deeds of Nueva Ecija, for annulment of real estate mortgage, extra-judicial foreclosure and special power of attorney in the RTC of Guimba, Nueva Ecija. The spouses Sangga, Septimo, and PNB filed their respective answers. For failure to file responsive pleading, Esguerra was declared in default.^[3] Subsequently, appellees filed an Amended Complaint^[4] to include, as relief, the annulment of the titles issued in the name of PNB. The Amended Complaint was admitted in the Order,^[5] dated July 29, 2004.

In their Amended Complaint, appellees alleged that: appellee Marina Gaspar is the registered owner of two (2) parcels of residential land covered by TCT Nos. NT-237996 (N-7056) and NT-237997 (N-7057), situated in Poblacion, Licab, Nueva Ecija; sometime in January 1995, Esguerra, a relative of appellee Victorino Rivera, went to their house to convince them to secure a loan of P50,000.00 from PNB and she offered to help them, claiming that she had connections with the bank's officers; in the latter part of the same month, appellees were instructed to bring the aforesaid titles to the house of Esguerra where they were introduced to Septimo, an alleged high ranking officer of PNB, Guimba Branch; appellees delivered the titles and Septimo made them sign a blank PNB Special Power of Attorney (SPA) form without explaining its contents; a month later, appellees asked about the status of their loan but Esguerra told them that it was disapproved; appellees asked for the return of their titles but Esguerra refused and claimed that she will make sure that the loan will be approved; appellees later discovered that their properties were already subject to extra-judicial foreclosure; upon investigation, they learned it was mortgaged by the appellants spouses Sangga under the SPA that appellees signed as security for a loan from PNB in the amount of P300,000.00; the spouses Sangga

are complete strangers to the appellees; on November 19, 1997, the mortgage was extrajudicially-foreclosed and the properties were sold at a public auction to PNB as the highest bidder; and, PNB caused the cancellation of appellee's titles and consolidated its ownership of the lots.

The spouses Sangga filed Amended Answer with Counter-claim and Answer to Cross-claim.^[6] They denied the allegations in the Amended Complaint and, by way of affirmative defense, alleged that: sometime in 1995, they were enticed to secure a loan from PNB by Esguerra who told them that she can facilitate the loan through her connections with bank officials and that no collateral is needed because the loan would be minimal; due to Esguerra's representations and because they needed more capital for their small business, they agreed to apply for a P50,000.00 loan; they went to the PNB-Guimba Branch where they were introduced to Septimo who made them sign blank PNB forms without giving them the opportunity to read their contents; later, they inquired about the status of their loan and Esguerra told them it was disapproved; subsequently, to their surprise, they received notice of a maturing P300,000.00 loan in their name as attorney-in-fact of appellees whom they did not personally know; they confronted Esguerra and she assured them that she will fix the problem^[7]; in a notarized *Sinumpaang Salaysay*^[8] (Exh. "2-Sangga") executed before barangay officials on July 30, 1997, Esguerra admitted that she secured a loan from PNB in the name of the spouses Sangga using the properties of appellees as collateral without the knowledge and consent of the Sanggas or the appellees and she promised to pay P500,000.00, representing the loan plus the interest.

PNB and Septimo filed Amended Answer with Compulsory Counterclaim and Cross-claim^[9] alleging that: the contents of the SPA were read and explained to the appellees and the signatures thereon are authentic and genuine, hence, the loan contracted by appellee's attorney-in-fact, the spouses Sangga, is legal and authorized; granting, without admitting, that appellees signed the SPA in blank, that does not affect its validity because the appellees knew what they were signing; insofar as they are concerned, the loan transaction was valid and binding and in as much as the loan was not paid, the foreclosure of the mortgage was in order.

Appellees also filed a criminal complaint for estafa against Esguerra, the spouses Sangga, and Septimo in the Office of the Provincial Prosecutor of Nueva Ecija. In a Joint Resolution^[10] dated December 12, 1997, the prosecutor found probable cause to charge Esguerra with estafa while Septimo and the spouses Sangga were exonerated.

On August 14, 2008, the RTC rendered the assailed Decision the decretal portion^[11] of which reads:

WHEREFORE, the judgment is rendered in favor of plaintiffs and:

1. Declaring the Special Power of Attorney, Real Estate Mortgage, extra-judicial foreclosure, the public auction and the certificate of sale all NULL and VOID;
2. Dismissing the complaint in so far as defendants spouses Sangga are

concerned;

3. Ordering the defendant Nieves Rivera Esguerra primarily liable or defendants Michael Septimo and/or Philippine National Bank, Guimba Branch subsidiary liable to pay the plaintiffs the amount of P70,000 for and as attorney's fees, litigation and incidental expenses;

4. Ordering the defendants Nieves Rivera Esguerra and Michael Septimo to pay plaintiffs the amount of P20,000.00 each for moral damages;

5. Ordering the Register of Deeds of Nueva Ecija to cancel the title registered and issued in the name of Philippine National Bank, Guimba Branch after payment of the necessary fees.

SO ORDERED.

PNB and Septimo filed a notice of appeal but it was denied on the ground of late filing. PNB and Septimo filed a Petition for Relief^[12] from judgment which the trial court granted in the interest of substantial justice.^[13]

In lieu of appellee's brief, appellees filed Manifestation with Motion to Dismiss the Appeal for having been filed out of time and without sufficient docket fees. The motion was dismissed by the Court of Appeals in its July 15, 2011 Resolution.^[14] Subsequently, the case was submitted for decision sans appellees' brief in a Resolution^[15] dated October 16, 2012.

On September 19, 2013, the appellees filed in this Court a Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction to restrain PNB from disposing of the lots and from demanding of appellees to vacate them. In a Resolution,^[16] dated March 5, 2014, this Court ordered that the motion shall be resolved together with the appeal.

In their Brief,^[17] Septimo and PNB raise the following issues:

1. Whether or not the deed of real estate mortgage executed by Spouses Bernabe and Luisa Sangga is valid, binding and effective against Spouses Marina Gaspar and Victorino Rivera.
2. Whether or not the proceeds of the loan in question was received by the defendants Nieves Rivera Esguerra and Spouses Bernabe and Luisa Sangga and appropriated the same for their own use and benefit.
3. Whether or not Nieves Rivers Esguerra, Spouses Bernabe and Luisa Sangga and Michael Septimo are liable to pay moral damages, attorney's fees, litigation expenses and exemplary damages to Spouses Marina and Victorino Gaspar.

PNB and Septimo contend that: the real estate mortgage is valid because appellee Marina Gaspar knew and cannot feign ignorance that her lots were to be used as collateral for a loan; it is contrary to human experience that in spite of her knowledge that the loan was disapproved Marina Gaspar would have allowed that her titles were not returned to her; the spouses Sangga denied having received the proceeds of the loan yet the signatures in the Credit Agreement, Real Estate Mortgage (REM), and Manager's Check in the name of Bernabe Sangga are the same or similar to Bernabe's signature on the carpetta of the case; the RTC gave weight to the *Sinumpaang Salaysay* of Esguerra even if she did not testify in court and notwithstanding the principle of *res inter alios acta*; during the time that the spouses Sangga and Gaspar were trying to settle the case there was no mention of Septimo and it was only after the meeting with Mayor Villaroman and the execution by Esguerra of her affidavit that Septimo was implicated; and Septimo should not be liable because he merely assisted in the loan application as a loan officer of PNB.

The spouses Sangga contend they had no knowledge of the SPA naming them as the attorney-in-fact of appellees; they were made to sign blank real estate mortgage forms and they did not know that these were for the mortgage of the properties of appellees; they are also victims of Esguerra's and Septimo's scheme to execute spurious documents in order to

illegally mortgage appellees' properties; Esguerra executed an affidavit admitting that she caused the mortgage of appellees' properties without their knowledge, received the proceeds of the loan, and appropriated the proceeds for her own use and benefit.^[18]

RULING

The appeal is not meritorious.

Article 2085 of the Civil Code enumerates the essential requisites of a mortgage, viz.: 1) that it be constituted to secure the fulfillment of a principal obligation; 2) that the mortgagor is the absolute owner of the thing mortgaged; 3) that the person constituting the mortgage has the free disposal of his or her property, and in the absence thereof, that he or she is legally authorized for that purpose.

A person who is not the absolute owner of a real property may constitute a mortgage over it provided that he is legally authorized to do so. Such authority must be granted under the auspices of a valid special power of attorney. Article 1878^[19] of the Civil Code requires a SPA to allow another person to act as an agent for the purpose of borrowing money or creating or conveying real rights over immovable property. If the SPA is defective or void, the resulting mortgage must be struck down. A forged special power of attorney cannot be the basis of a valid mortgage contract or of a subsequent foreclosure and consolidation of title.^[20] A SPA, as a form of agency, must meet the requisites of a valid contract.^[21] There must be a meeting of the minds as to the cause and object of the contract, the constitution of an agency.

In this case, an examination of the Credit Agreement^[22] and the REM^[23] shows that they were signed by spouses Sangga "*for themselves and as AIF (attorney-in-*