

SPECIAL FOURTH DIVISION

[CA-G.R. CV No. 96213, November 26, 2014]

CORAZON A. MATIC, PLAINTIFF-APPELLEES, VS. WILLIAM ONG GENATO, DEFENDANT-APPELLANT,

DECISION

SORONGON, J.:

This is an Appeal^[1] from the September 08, 2010 Decision^[2] of the Regional Trial Court of Balanga City, Branch 2 in Civil Case No. 7166 entitled "*Corazon A. Matic vs. William Ong Genato, et al.*". The assailed decision declared, among others, the Memorandum of Agreement (MOA)^[3] dated May 8, 1998 as null and void.

In her complaint^[4], plaintiff-appellee Corazon Matic (Corazon for short) alleged that sometime in April 1998, Ernesto Bulos (Ernesto) and Teofilo Manandeg (Teofilo) asked her to help them purchase on credit two taxicabs and two buses from defendant-appellant William Ong Genato (Genato for brevity). Acceding to their request, Corazon prepared twenty-four (24) postdated checks at Php94,658.33 each in favor of Genato for the monthly amortization of the said vehicles which she delivered to the latter together with the owner's duplicate copy of Transfer Certificate of Title (TCT) No. T-152088 of her farmland in Bataan. It was agreed by Corazon and Genato that the checks would be deposited and the real estate mortgage on her property would be executed once the vehicles become operational and delivered to Corazon. The two taxicabs delivered were not yet operational that one was returned to Genato. In view thereof, Corazon did not fund her checks and the proposed real estate mortgage was not executed. Unmindful, Genato went on to encash the checks which naturally were all dishonored. As a result, Genato filed a complaint for violation of BP 22 against Corazon with the Quezon City Prosecutor's Office. But the same was later dismissed. Failing in his attempt to have Corazon prosecuted, Genato filed on June 25, 2000 a Petition for Sale with the Office of the Clerk of Court of the Regional Trial Court of Bataan for the foreclosure of her property under Act 3135 on the basis of their MOA dated May 8, 1998. The *Ex Officio* Provincial Sheriff or the sheriff-in-charge issued a Notice of Sheriff's Sale^[5] on July 12, 2000 setting the public auction on August 28, 2000. To thwart the impending public sale on August 25, 2000 Corazon filed a case for *Annulment of Agreement, Injunction and Damages (case a quo)* also in the RTC of Balanga City. Seeing the urgency of the matter, the trial court issued a Temporary Restraining Order^[6] stopping the imminent public auction. Then after due hearing, a preliminary injunction was also issued.^[7]

During the hearing, Corazon endeavored to prove^[8] that she was the guarantor of Ernesto in the purchase of two taxicabs and two buses. Only one of the taxicabs was delivered to Ernesto while the other one was delivered to Teofilo. When the two buses were not delivered, she told Genato that she was backing out from the said

transaction and will no longer fund the checks and had her checking account closed thereafter.

Corazon also claimed that her signature in the MOA was forged. She submitted into evidence a "*Questioned Document Report*"^[9] from the NBI which concluded that "the questioned and the standard/sample signatures 'Corazon A. Matic' were not written by one and the same person. NBI handwriting expert Rhoda Flores testified^[10] that the standard signatures submitted for examination and comparison with the questioned signatures were thirty-three (33) samples. Her examination showed that there were significant fundamental differences in the execution, structural forms and designs of letters between the questioned and standard signature samples of Corazon.

On the other hand, Genato alleged that he came to know Corazon when she visited his office in Kamias Road, Quezon City, along with Ernesto and Teofilo to buy on credit two units of buses and two units of taxicabs. As security therefor, Corazon offered her farm land including 24 postdated checks. Genato told Corazon to execute the MOA which she obligingly acceded as in fact the same was signed at his office. Then Corazon left a copy of the title of her farmland while Genato gave her five (5) copies of the MOA for notarization. After it was notarized Corazon left him his own copy of the MOA. To release the said vehicles, Genato gave her gate pass for the two taxicabs and one bus. The other bus was not released anymore because of the misunderstanding between Corazon and Ernesto.

For his part, Teofilo said that he knows Corazon through Ernesto and that the two wanted to engage in a transport business. He brought them to Genato's office wherein they were told of the terms for the purchase of vehicles on credit. Aside from the checks she issued, Corazon also offered her farmland in Bataan as collateral. In fact, he volunteered to inspect the said lot for Genato. Convinced that the land of Corazon is a good security, he gave a favorable recommendation to Genato. The sale on credit of the vehicles was consummated and the MOA between Corazon and Genato was forthwith executed wherein Ernesto and Teofilo signed therein as witnesses. Corazon got one (1) bus and two (2) taxicabs. The bus turned out to be unserviceable. One of the taxicabs was given to Ernesto while the other unit was given to Teofilo as his commission.

On September 8, 2010, the trial court issued the assailed decision, the dispositive portion thereof reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the Memorandum of Agreement (Exhibit B) as null and void and without any binding effect whatsoever, and further making the preliminary injunction issued in this case final and permanent, Defendant William Ong Genato is likewise ordered to pay attorney's fees amounting to Php40,000.00 and litigation expenses in the sum of Php10,000.00.

No pronouncement as to the costs and damages.

SO ORDERED."

Therefrom, Genato interposed this appeal alleging that:

THE COURT A QUO ERRED IN DECLARING THE MEMORANDUM OF AGREEMENT (MOA) NULL AND VOID, AFTER IT HAS EXPRESSED DOUBT THAT THE SIGNATURE OF PLAINTIFF WAS FORGED AND IN THE FACE OF THE EVIDENCE THAT THE SIGNATURE OF THE PLAINTIFF IS GENUINE AND THE SAID MOA WAS DULY EXECUTED.

THE COURT A QUO ERRED IN NOT FINDING THAT THE LOANS EXTENDED IN FAVOR OF THE PLAINTIFF WAS SECURED BY A VALID REAL ESTATE MORTGAGE.

THE COURT A QUO ERRED IN NOT FINDING THE PLAINTIFF'S LOAN/OBLIGATION WAS DUE AND DEMANDABLE AND UNPAID AND SHOULD HAVE ORDERED PLAINTIFF TO PAY THE SAME WITHIN 90 DAYS; OTHERWISE THE PARCEL OF LAND SUBJECT OF THE [MOA] (WHICH WAS IN FACT A VALID REAL ESTATE MORTGAGE) SHOULD BE SOLD AT PUBLIC AUCTION AS IN SEC. 2, RULE 68 OF THE RULES OF COURT.

THE DECISION OF THE COURT A QUO IS AN INCOMPLETE DECISION, A NULLITY. IT DID NOT COMPLETELY DISPOSE THE MATTER OF THE UNPAID LOANS OF PLAINTIFF AND DISPOSE THE MATTER IN ACCORDANCE WITH THE RULES.

To us, the issues to be resolved are as follows: (1) Whether or not the trial court was correct in declaring the MOA as null and void; (2) Granting that the MOA is valid and enforceable, whether or not the subject property can be extrajudicially foreclosed; and, (3) whether or not the assailed decision has completely disposed of all the issues raised for its resolution.

We discuss the first and second issues jointly.

The complaint filed by Corazon is mainly for the annulment of the MOA on the ground that her signature therein was forged.

However, a reading of the trial court's assailed decision showed that the MOA was declared null and void not on the basis of forgery but because the agreement between Corazon and Genato was never consummated. We agree. Evidence showed that Genato delivered only one bus and two taxicabs. The bus delivered was inserviceable and in fact it was returned to him later. The two taxicabs were given to Ernesto and Teofilo respectively but the unit assigned to the former was also returned after a year because it became inserviceable.

The trial court was correct in saying that the property of Corazon cannot be extrajudicially foreclosed by Genato because there was no validly constituted real estate mortgage in accordance with the Rules of Court (*Rule 68 not Rule 70 as cited in the assailed decision*). The MOA does not contain a provision giving him a special power to sell the said property thereby precluding him from filing a petition for extrajudicial foreclosure of mortgage. Extrajudicial foreclosure sale of a mortgaged

real property is governed by Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages." Section 1 thereof clearly states:

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

In the case of *Paguyo vs. Gatbunton*^[11] it was held that extrajudicial foreclosure sales are proper only when so provided under a special power inserted in or attached to the mortgage contract.

Perusing the MOA, it would seem that extrajudicial foreclosure was not made an option. *First*, there is no special power to sell given to Genato. *Second*, the terms of the MOA provided for a court action to foreclose. Clause 5 of the MOA pertinently provides:

5). That in the event of none compliance of the above mentioned agreement by the FIRST PARTY-CORAZON MATIC, the SECOND PARTY WILLIAM O. GENATO shall have the right to get back all the subject vehicles indicated above without notice and court action and foreclosed (sic) the collateral Annex 'A' of this Agreement (Title No. T-152088).

We cannot however subscribe with the disposition of the trial court that there was no validly constituted real estate mortgage upon the property because it was not duly recorded in the registry of property. While it is true that it is necessary to have the mortgage contract registered, its validity is not affected insofar as the contracting parties are concerned. In point is Article 2125 of the Civil Code of the Philippines which provides:

Art.2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

Case law had always rejected the proposition that non-registration of mortgage is tantamount to a declaration of invalidity. Indeed, even if the instrument were not recorded, the mortgage is nevertheless binding between the parties.^[12] And, as between the parties to the agreement, the mere fact that there is as yet no