



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

CONCHITA GLORIA and
 MARIA LOURDES GLORIA-
 PAYDUAN,

Petitioners,

G.R. No. 202324

Present:

LEONARDO-DE CASTRO,*
Acting Chairperson,

DEL CASTILLO,
 JARDELEZA,
 TIJAM,** and
 GESMUNDO,*** JJ.

- versus -

BUILDERS SAVINGS AND
 LOAN ASSOCIATION, INC.,

Respondent.

Promulgated:
JUN 04 2018

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DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the March 13, 2012 Decision² and June 18, 2012 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 82774, which respectively reversed the March 12, 2004 Order⁴ of the Quezon City Regional Trial Court, Branch 224 (RTC) in Civil Case No. Q-93-16621 and denied herein petitioners' Motion for Reconsideration.⁵

* Per Special Order No. 2559 dated May 11, 2018.

** On official leave.

*** Per Special Order No. 2560 dated May 11, 2018.

¹ *Rollo*, pp. 8-24.

² *Id.* at 120-134; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez.

³ *Id.* at 146-147.

⁴ *Id.* at 55-64; penned by Pairing Judge Ramon A. Cruz.

⁵ *Id.* at 135-144.

Factual Antecedents

Spouses Juan and herein petitioner Conchita Gloria (Conchita) are registered owners of a parcel of land located in Kamuning, Quezon City covered by Transfer Certificate of Title No. 35814 (TCT 35814).⁶ Petitioner Maria Lourdes Gloria-Payduan (Lourdes) is their daughter.⁷

On August 14, 1987, Juan passed away.⁸

On December 7, 1993, Conchita and Lourdes filed before the RTC a Second Amended Complaint⁹ against respondent Builders Savings and Loan Association, Inc. (Builders Savings), Benildo Biag (Biag), and Manuel F. Lorenzo for “declaration of null and void real estate mortgage, promissory note, cancellation of notation in the transfer certificate of title, and damages”¹⁰ with prayer for injunctive relief. The case was docketed as Civil Case No. Q-93-16621. Petitioners claimed that Biag duped them into surrendering TCT 35814 to him under the pretense that Biag would verify the title, which he claimed might have been fraudulently transferred to another on account of a fire that gutted the Quezon City Registry of Deeds; that Biag claimed that the title might need to be reconstituted; that Biag instead used the title to mortgage the Kamuning property to respondent Builders Savings; that Conchita was fraudulently made to sign the subject loan and mortgage documents by Biag, who deceived Conchita into believing that it was actually Lourdes who requested that these documents be signed; that the subject Mortgage¹¹ and Promissory Note¹² contained the signature not only of Conchita, but of Juan, who was by then already long deceased, as mortgagor and co-maker; that at the time the loan and mortgage documents were supposedly executed, Conchita was already sickly and senile, and could no longer leave her house; that Biag and Builders Savings conspired in the execution of the forged loan and mortgage documents; that the forged loan and mortgage documents were not signed/affirmed before a notary public; that on account of Biag and Builders Savings’ collusion, the subject property was foreclosed and sold at auction to the latter; and that the loan and mortgage documents, as well as the foreclosure and sale proceedings, were null and void and should be annulled. Petitioners thus prayed that the Mortgage and Promissory Note be declared null and void; that the encumbrances/annotations in the subject title be cancelled; that the certificate of title be returned to them; and that they be awarded ₱500,000.00 moral damages, ₱50,000.00 exemplary damages, ₱20,000.00 actual damages, ₱20,000.00 attorney’s fees and other legal expenses, and costs of suit.

⁶ Id. at 31-32.

⁷ Id. at 153.

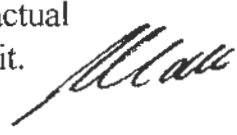
⁸ Id. at 29.

⁹ Id. at 41-46.

¹⁰ Id. at 41.

¹¹ Id. at 33.

¹² Id. at 34.



On the other hand, Builders Savings claimed that –

x x x Lourdes Payduan had neither the capacity to sue nor the authority and interest to file the case *a quo*. She was merely an “ampon” or “palaki” of the Spouses Juan and Conchita Gloria and was not legally adopted by them. Moreover, Conchita neither signed the verification attached to the complaint nor executed a special power of attorney to authorize her daughter Maria Lourdes to pursue the case *a quo*. Further, Conchita never appeared in court to testify during trial. BLSA presented its Credit Investigator Danilo Reyes who testified that he personally met Spouses Juan and Conchita Gloria, Maria Lourdes and her husband, and Benildo Biag when they went to their office to apply for a loan. He also saw the identification card presented by Juan to verify and confirm his identity. Likewise, Conchita was a retired public school teacher who could not be cajoled by Benildo to execute a real estate mortgage on her property against her will. In the same vein, the fact that Conchita submitted floor plans of her house and its tax declarations only signified that she voluntarily mortgaged her property.¹³

Ruling of the Regional Trial Court

On September 26, 2003, the RTC issued its Decision in Civil Case No. Q-93-16621 dismissing petitioners’ complaint for lack of merit. The counterclaims and crossclaims were likewise dismissed.

Petitioners moved to reconsider.

On March 12, 2004, the RTC issued its Order granting petitioners’ motion for reconsideration. The trial court held:

When plaintiff Marides Gloria Payduan testified, she told the Court that Benildo Biag was introduced to her by her husband for the purpose of reconstituting TCT No. 35814 because it was one of those burned. Benildo Biag told them that he [knows] of someone who could help them reconstitute the title. This happened sometime [in] June of 1988. So, they gave him the original copy of the title on June 26 at their residence at 161 K-3rd Street, Kamuning, Quezon City. Mr. Benildo Biag promised to return the title to them, but failed to [do so] until they knew that it has already been mortgaged. (TSN April 25, 1997, pp. 21 to 26).

x x x x

[Thus, when plaintiff Conchita Gloria x x x signed the promissory note and the real estate mortgage], she] was not acting freely and with all her faculties functioning. She signed the papers given to her by Benildo Biag under the thought that this will be used in the reconstitution of her original certificate of title but it

¹³ Id. at 123-124.

turned out however that Benildo Biag used them to secure the loan proceeds from the defendant Builders.

Under Article 1330 of the Civil Code, a contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable.

x x x x

Under the circumstances, defendant Builders should have exerted extra diligence before it approved the loan application of Benildo Biag and had it [exerted] extra effort in investigating the factual circumstances of the loan application, it could have discovered that plaintiff Conchita Gloria's signature in the promissory note x x x and the deed of real estate mortgage x x x were not authorized and that her husband Juan Gloria had died x x x before the filing of the loan application. These are factual milieu which militates against Builders. As held in *Gatioan vs. Gaffud* (27 SCRA 706), before a bank grants a loan on the security of land, it must undertake a careful examination of the title of the applicant as well as a physical and on the spot investigation of the land offered as a security. There is a dearth of proof in the Builders evidence that it has investigated the person of plaintiff Conchita Gloria and the land offered as a collateral.

The case of *Rural Bank of Caloocan City vs. CA* (104 SCRA 151) is also four square. It was held therein that 'A contract may be annulled on the ground of vitiated consent, if deceit by a third person, even without connivance or complicity with one of the contracting parties, resulted in mutual error on the part of the parties to the contract. x x x The possibility of her not knowing that she signed the promissory note as co-maker x x x, and that her property was mortgaged to secure the x x x loans, in view of her personal circumstances - ignorance, lack of education and old age - should have placed the Bank on prudent inquiry to protect its interest and that of the public it serves. With the recent occurrence of events that have supposedly affected adversely our banking system, attributable to laxity in the conduct of bank business by its bank officials, the need [for] extreme caution and prudence by said officials and employees in the discharge of their functions cannot be overemphasized.'

Art. 2085 of the Civil Code, is also appropriate. It provides that:

x x x x

3. The mortgagor should have the free disposal of the property mortgaged and in the absence thereof, he should be authorized for the purpose.

Thus, it is settled that if a forger mortgages another's property, the mortgage is void. (*De Lara vs. Ayroso*, 95 Phil. 185)

x x x x

Similarly, in *Parqui vs. PNB* (96 Phil. 157), the Court said, 'there can be no question that the mortgage under consideration is a nullity, the same having been executed by an impostor without the authority of the owner of the interest mortgaged. Its registration under the Land Registration Law lends no validity because, according to the last proviso to the second paragraph of Section 55 of that law, registration procured by the presentation of a forged deed is null and void.'



The evidence extant in the records being preponderant to establish the negligence of Builders, the Court next looks at plaintiffs' claim for damages. x x x

x x x x

Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary estimation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. An amount of ₱200,000.00 to answer for her sufferings, anguish and fright appears to be reasonable and fair.

On the other hand, the Court has to deny plaintiffs' prayer for actual damages since plaintiffs failed to substantiate the same, either by testimonial or documentary evidence. It is a basic rule that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. (Art. 2219, NCC). x x x

The Court likewise finds it proper to award an attorney's fees in the amount of ₱20,000.00 in favor of the plaintiffs as they were compelled to litigate the instant case through their counsel. x x x

x x x x

Accordingly, therefore, the decision of the Court dated September 26, 2003 is hereby reconsidered and set aside and a new one is entered in favor of the plaintiff[s] and as against the defendant:

a) declaring the real estate mortgage dated June 26, 2001 and the promissory note dated June 28, 2001 null and void;

b) directing the cancellation of the annotations in the TCT No. 35814 of Conchita Gloria;

c) directing the defendant Builders Savings and Loan Association, Inc. to return to plaintiffs TCT No. 35814 of the Registry of Deeds of Quezon City free from all liens and encumbrances;

d) directing the defendant Builders to pay plaintiffs moral damages in the amount of ₱200,000.00; and

e) directing the defendant Builders to pay plaintiffs attorney's fees in the amount of ₱20,000.00.

SO ORDERED.¹⁴

Ruling of the Court of Appeals

Respondent interposed an appeal before the CA. On March 13, 2012, the

¹⁴ Id. at 56-64.



CA issued the assailed Decision, decreeing as follows:

In fine, BSLA asserts that x x x Conchita voluntarily executed the real estate mortgage who submitted supporting documents to secure the loan of Benildo Biag. The testimony of Maria Lourdes assailing the contract was merely hearsay and could not be used as evidence and basis for the nullification of the contract.

x x x x

The appeal is impressed with merit.

x x x x

Here, after a careful perusal of the records, this Court finds that there are procedural infirmities that warrant the dismissal of the complaint *a quo*.

First, the complaint sought for the nullification of real estate mortgage contract and promissory note executed by Conchita to secure the loan of Benildo with BSLA on the ground that Conchita's signature was obtained through fraud, without her full knowledge of the import of her act.

The parties to a contract are the real parties in interest in an action upon it. Thus, Rule 3 of the Rules of Court defines a real party in interest, thus:

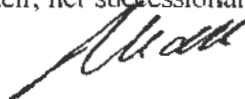
Sec. 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The aforesaid provision has two (2) requirements: 1) to institute an action, the plaintiff must be the real party in interest, and 2) the action must be prosecuted in the name of the real party in interest. x x x When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action. Accordingly, only the contracting parties are bound by the stipulations in the contract since they are the ones who would benefit from and could violate it. Hence, one who is not a party thereto, and for whose benefit it was not expressly made, cannot maintain an action on it. x x x In the case at bar, the real party in interest was Conchita being the person who executed the real estate mortgage contract. It was she who would stand to suffer by the fulfillment of its terms because she obligated herself as a mortgagor who would answer to BSLA upon the default of Benildo.

On the other hand, Maria Lourdes claimed that she is a real party in interest because she is a co-owner of the property for having inherited a portion thereof from her deceased father, Juan.

We are not persuaded.

When an alleged heir [sues] to nullify a document which would impair her interest as such heir, her successional rights must first be determined in a special proceeding. x x x



X X X X

Thus, in order that Maria Lourdes be clothed with personality to institute the complaint *a quo*, she must show that she has a real interest which would suffer any detriment by its performance or annulment. This she must do only after establishing that she is a legal heir of Juan and that she inherited the property subject of the mortgage and accordingly, a co-owner thereof. This, however, Maria failed to do. Nothing in the records appear that a judicial or extrajudicial partition was made by Juan's heirs. Neither does it appear that the only property left by Juan is the same property subject of the mortgage. Further, Maria Lourdes did not present any evidence to establish her rights as heir or prove that Juan had no other heirs who are not parties in this case. Apparently, there is yet a need to first determine Maria Lourdes' rights through a special proceeding. Clearly, then, Maria Lourdes could not be considered a real party in interest to institute the action in the court *a quo* to nullify the real estate mortgage executed by Conchita absent any proof to show that she has an interest over the subject property.

On this note, this brings us to the second point in issue. A careful perusal of the record shows that plaintiffs-appellees' *Second Amended Complaint* appears to have been accompanied with a defective verification which was signed by Maria Lourdes only and not Conchita, with no reasonable justification for the omission whatsoever. It was likewise not accompanied by a certification against non-forum shopping [sic] with no justification presented by plaintiffs-appellees. x x x

X X X X

It is true that defect in the verification will not render the pleading fatally defective. This, however, does not hold true for a certification against forum shopping which must be signed by all the plaintiffs. Failure to do so will result to the dropping of the parties who did not sign. Here, the failure of Conchita to sign the certification against non-forum shopping [sic], not once, but thrice, [in] the *Complaint, Amended Complaint, and Second Amended Complaint*, would result to dropping her from the case as plaintiff therein. She was not able to provide any justification for this omission to warrant the relaxation of the rules. Moreover, Conchita and Maria Lourdes do not hold a common interest because Conchita was the party who executed the real estate mortgage contract and the registered owner of the subject property, while as above-discussed, Maria Lourdes's interest was not established.

Assuming *arguendo* that Conchita will not be dropped as party to the case, the evidence presented by plaintiffs-appellees are not sufficient to support the grant of their complaint. The allegations of fraud were established only through the testimony of Maria Lourdes who had no personal knowledge of the circumstances that would constitute the fraud allegedly committed by BSLA. She merely relied on the statement made by Conchita that she was misled into signing the contract making her believe that it was for the reconstitution of her title with the Register of Deeds. Thus, Maria Lourdes' statement has no probative value absent any showing that the evidence falls within the exception to the hearsay evidence rule.

Based on the foregoing, this Court is constrained to dismiss plaintiffs-appellees' complaint.

WHEREFORE, the *Order* dated March 12, 2004 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 224, Quezon City, in Civil



Case No. Q-93-16621, entitled "Conchita Gloria, et al., Plaintiffs, versus Builders Savings and Loan Association Inc., et al., Defendants, is REVERSED AND SET ASIDE. The *Second Amended Complaint* dated December 3, 1993 filed by plaintiffs-appellees Conchita Gloria and Maria Lourdes Payduan is DISMISSED.

SO ORDERED.¹⁵

Petitioners moved to reconsider, but in a June 18, 2012 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioners submit the following issues to be resolved:

1. WHETHER x x x PETITIONER MARIA LOURDES GLORIA-PAYDUAN AS CO-OWNER OF SUBJECT REAL PROPERTY, IS A REAL PARTY IN INTEREST IN THIS CASE.
2. WHETHER x x x IT IS APPROPRIATE FOR THE APPELLATE COURT TO PASS UPON ISSUE NOT RAISED BY APPELLANT IN ITS APPELLANT'S BRIEF'S ASSIGNMENT OF ERRORS.¹⁶

Petitioners' Arguments

Petitioners contend that Lourdes had proved that she was the daughter of Conchita and Juan; that the subject property was conjugal property belonging to both Juan and Conchita; that when Juan died in 1987, Lourdes became a co-owner of the subject property by virtue of her being a compulsory heir of Juan; that as co-owner of the subject property, she has the required interest to prosecute Civil Case No. Q-93-16621; that the CA erred in declaring that Lourdes must first obtain a declaration of heirship, since Article 777 of the Civil Code specifically provides that successional rights are transmitted from the decedent to his/her heirs from the moment of death of the former; that even if there were no pending settlement proceedings for the distribution of a decedent's estate, there was no need for a prior declaration of heirship before the heirs may commence an action arising from any right of the deceased, such as the right to bring an action to annul a sale;¹⁷ that the issue of lack or improper verification was never raised by the respondent at any stage of the proceedings, yet the CA unduly took cognizance thereof; that even if Conchita failed to sign the amended complaint, this could not affect the same since both she and Lourdes shared a common interest in the subject property as co-owners thereof; and that the subject real estate mortgage and promissory note were null and

¹⁵ Id. at 126-133.

¹⁶ Id. at 14.

¹⁷ Citing *Quison v. Salud*, 12 Phil. 109 (1908), cited in Paras, Civil Code of the Philippines Annotated, 12th Edition, Volume 3, p. 18.

void for being simulated, since they were supposedly signed and executed by Juan in 1991, when he actually passed away in 1987.

Petitioners pray that the CA dispositions be annulled and in lieu thereof, the RTC's March 12, 2004 Order be reinstated.

Respondent's Arguments

Respondent, on the other hand, failed to comment on the Petition despite repeated directives from the Court.

Our Ruling

The Petition is granted.

The evidence reveals that Lourdes is the daughter of Juan and Conchita. There is on record a Certification of Birth¹⁸ issued by the Lipa City Office of the Local Civil Registrar indicating that Lourdes was born to Juan and Conchita; this document was marked as Exhibit "H" during the proceedings below, and remains uncontested. Moreover, Lourdes categorically testified during trial that she was the natural child of Juan and Conchita, thus:

CROSS-EXAMINATION

ATTY. TAMPOC - Ms. Marides Gloria, you claimed to be the daughter of Conchita Gloria, one of the plaintiffs in this case?

A - Yes, sir.

Q - You are, however, claiming only to be the adopted daughter of plaintiff Conchita Gloria, correct?

A - No, sir, I am the true daughter, sir.

COURT - Tunay na anak?

A - I was the daughter, Your Honor.

Q - Being a daughter she is a compulsory heir, Atty. Tampo.

x x x x

COURT - Ano ka ba, tunay na anak o adopted ka lang?

A - I am a true daughter, Your Honor. In fact, I have a birth certificate.¹⁹

¹⁸ Rollo, p. 153.

¹⁹ Id. at 149-152.

Being the daughter of the deceased Juan and Conchita, Lourdes has an interest in the subject property as heir to Juan and co-owner with Conchita. The fact that she was not judicially declared as heir is of no moment, for, as correctly argued by petitioners, there was no need for a prior declaration of heirship before heirs may commence an action arising from any right of their predecessor, such as one for annulment of mortgage. “[N]o judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased.”²⁰

x x x. A prior settlement of the estate is not essential before the heirs can commence any action originally pertaining to the deceased as we explained in *Quison v. Salud* –

Claro Quison died in 1902. It was proven at the trial that the present plaintiffs are next of kin and heirs, but it is said by the appellants that they [were] not entitled to maintain this action because there [was] no evidence that any proceedings [had] been taken in court for the settlement of the estate of Claro Quison; and that without such settlement, the heirs cannot maintain this action. There is nothing in this point. [Under] the Civil Code [and/or] Code of Civil Procedure, the title to the property owned by a person who dies intestate passes at once to his heirs. Such transmission is, under the present law, subject to the claims of administration and the property may be taken from the heirs for the purpose of paying debts and expenses, but this does not prevent an immediate passage of the title, upon the death of the intestate, from himself to his heirs. Without some showing that a judicial administrator had been appointed in proceedings to settle the estate of Claro Quison, the right of the plaintiffs to maintain this action is established.

Conformably with the foregoing and taken in conjunction with Arts. 777 and 494 of the Civil Code, from the death of Lourdes Sampayo her rights as a co-owner, incidental to which is the right to ask for partition at any time or to terminate the co-ownership, were transmitted to her rightful heirs. In so demanding partition private respondents merely exercised the right originally pertaining to the decedent, their predecessor-in-interest.²¹ (Citations omitted)

As regards the supposed defective verification occasioned by Conchita’s failure to sign the amended complaint with its concomitant verification and certification against forum shopping, the Court has repeatedly held that in a case involving co-owners of property where said property is the subject matter of the suit, the failure of the other co-owners to sign the verification and certification against forum shopping is not fatal, as the signing by only one or some of them constitutes substantial compliance with the rule.

Finally, we find no merit in respondents’ argument that the present petition should be dismissed for failure of the other co-heirs/co-petitioners to sign the

²⁰ *Capablanca v. Bas*, G.R. No. 224144, June 28, 2017.

²¹ *Heirs of Ignacio Conti v. Court of Appeals*, 360 Phil. 536, 546 (1998).



verification and certification against forum-shopping as required by Sections 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure.

In the case of *Iglesia Ni Cristo v. Judge Ponferrada* we expounded on the purpose and sufficiency of compliance with the verification and certification against forum shopping requirements, viz :

The issue in the present case is not the lack of verification but the sufficiency of one executed by only one of [the] plaintiffs. This Court held in *Ateneo de Naga University v. Manalo*, that the verification requirement is deemed substantially complied with when, as in the present case, only one of the heirs-plaintiffs, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition (complaint), signed the verification attached to it. Such verification is deemed sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, not merely speculative.

The same liberality should likewise be applied to the certification against forum shopping. The general rule is that the certification must be signed by all plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed in a number of cases that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.

The substantial compliance rule has been applied by this Court in a number of cases: *Cavile v. Heirs of Cavile*, where the Court sustained the validity of the certification signed by only one of petitioners because he is a relative of the other petitioners and co-owner of the properties in dispute; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, where the Court allowed a certification signed by only two petitioners because the case involved a family home in which all the petitioners shared a common interest; *Gudoy v. Guadalquiver*, where the Court considered as valid the certification signed by only four of the nine petitioners because all petitioners filed as co-owners pro indiviso a complaint against respondents for quieting of title and damages, as such, they all have joint interest in the undivided whole; and *Dar v. Alonzo-Legasto*, where the Court sustained the certification signed by only one of the spouses as they were sued jointly involving a property in which they had a common interest.

It is noteworthy that in all of the above cases, the Court applied the rule on substantial compliance because of the commonality of interest of all the parties with respect to the subject



of the controversy.²² (Citations omitted)

“As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.”²³

Finally, the Court finds the trial court to be correct in issuing the March 12, 2004 Order granting petitioners’ motion for reconsideration and declaring the mortgage and promissory note as null and void. The evidence indicates that these documents were indeed simulated; as far as petitioners were concerned, they merely entrusted the title to the subject property to Biag for the purpose of reconstituting the same as he claimed that the title on file with the Registrar of Deeds of Quezon City may have been lost by fire. Petitioners did not intend for Biag to mortgage the subject property in 1991 to secure a loan; yet the latter, without petitioners’ knowledge and consent, proceeded to do just that, and in the process, he falsified the loan and mortgage documents and the accompanying promissory note by securing Conchita’s signatures thereon through fraud and misrepresentation and taking advantage of her advanced age and naivete and forged Juan’s signature and made it appear that the latter was still alive at the time, when in truth and in fact, he had passed away in 1987. A Certificate of Death²⁴ issued by the Quezon City Local Civil Registrar and marked as Exhibit “D” and admitted by the trial court proves this fact. Under the Civil Code,

Art. 1346. An absolutely simulated or fictitious contract is void. x x x

Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) x x x;
- (2) Those which are absolutely simulated or fictitious;

In the case of *Spouses Solivel v. Judge Francisco*,²⁵ the Court made the following pronouncement:

x x x Thus, in *Ayroso*, this Court annulled a mortgage executed by an impostor who had unauthorizedly gained possession of the certificate of title thru the owner's daughter and forged said owner's name to the deed of mortgage which was subsequently registered. In so doing, the Court found more applicable the case of *Ch. Veloso vs. La Urbana and Del Mar*, which also voided a mortgage of real property owned by plaintiff Veloso constituted by her brother-in-law, the

²² *Heirs of Renato L. Delfino, Sr. (Deceased) v. Anasao*, 742 Phil. 699, 717-718 (2014).

²³ *Iglesia Ni Cristo v. Judge Ponferrada*, 536 Phil. 705, 722 (2006).

²⁴ *Rollo*, p. 29.

²⁵ 252 Phil. 223, 229-230 (1989).

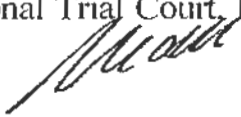


defendant Del Mar, using two powers-of-attorney to which he had forged the signatures of said plaintiff and her husband, and which mortgage was later registered with the aid of the certificate of title that had come into Del Mar's possession by unknown means. x x x

Even more in point and decisive of the issue here raised, however, is the much later case of *Joaquin vs. Madrid*, where the spouses Abundio Madrid and Rosalinda Yu, owners of a residential lot in Makati, seeking a building construction loan from the then Rehabilitation Finance Corporation, entrusted their certificate of title for surrender to the RFC to Rosalinda's godmother, a certain Carmencita de Jesus, who had offered to expedite the approval of the loan. Later having obtained a loan from another source, the spouses decided to withdraw the application they had filed with the RFC and asked Carmencita to retrieve their title and return it to them. Carmencita failed to do so, giving the excuse that the employee in charge of keeping the title was on leave. It turned out, however, that through the machinations of Carmencita, the property had been mortgaged to Constancio Joaquin in a deed signed by two persons posing as the owners and that after said deed had been registered, the amount for which the mortgage was constituted had been given to the person who had passed herself off as Rosalinda Yu. x x x (Citations omitted)

As a consequence of Biag's fraud and forgery of the loan and mortgage documents, the same were rendered null and void. This proceeds from the fact that Biag was not the owner of the subject property and may not thus validly mortgage it, as well as the well-entrenched rule that a forged or fraudulent deed is a nullity and conveys no title. "In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void."²⁶ And "when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the mortgagee acquire any right or title to the property. In such a case, the mortgagee under the forged instrument is not a mortgagee protected by law."²⁷ Lastly, when "the person applying for the loan is other than the registered owner of the real property being mortgaged[, it] should have already raised a red flag and x x x should have induced the [mortgagee] to make inquiries into and confirm [the authority of the mortgagor]."²⁸

WHEREFORE, the Petition is **GRANTED**. The assailed March 13, 2012 Decision and June 18, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 82774 are **ANNULLED** and **SET ASIDE**. The March 12, 2004 Order of the Quezon City Regional Trial Court, Branch 224 in Civil Case No. Q-93-16621 is **REINSTATED**.




²⁶ *Land Bank of the Philippines v. Poblete*, 704 Phil. 610, 621 (2013).

²⁷ *Id.* at 620.

²⁸ *Bank of Commerce v. Spouses San Pablo, Sr.*, 550 Phil. 805, 822-823 (2007).

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


FRANCIS H. JARDELEZA
Associate Justice

(On official leave)
NOEL GIMENEZ TIJAM
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice



