



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MALAYAN BANK SAVINGS AND G.R. No. 249281
MORTGAGE BANK,

Petitioner, Present:

- versus -

LEONEN, J., Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

SPS. JOSEPH & JOCELYN
CABIGAO represented by
EDGARDO S. SUAREZ, and
ROSALINDA E. TECHICO,
FERDINAND ANTHONY C.
SEVILLEJA (as the former
Registrar of Deeds of Meycauayan, Promulgated:
Bulacan),

Respondents. March 17, 2021

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DECISION

INTING, J.:

This is a Petition for Appeal by *Certiorari*¹ filed pursuant to Rule 45 of the Rules of Court assailing the Decision² dated April 24, 2019 and the Resolution³ dated September 2, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 108813. The assailed Decision denied the appeal and affirmed the Decision⁴ of Branch 84, Regional Trial Court (RTC), Malolos City, Bulacan dated August 19, 2016 in Civil Case No. 310-M-2011 that declared the documents of sale and real estate mortgage as null and void, including the issued certificate of title.

¹ *Rollo*, pp. 11-27.

² *Id.* at 35-49; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mario V. Lopez (now a member of the Court) and Justice Tita Marilyn B. Payoyo-Villordon, concurring.

³ *Id.* at 207-208.

⁴ Records, Vol. IV, pp. 1185-1199; penned by Pairing Judge Guillermo P. Angloro.

The Antecedents

Sometime in March 2011, Spouses Joseph and Jocelyn Cabigao (Spouses Cabigao), the registered owners of a 7,842.50 square meter lot (subject property) under Transfer Certificate of Title (TCT) No. T-282258 (M),⁵ discovered that their title was cancelled whereby TCT No. 040-2010003403⁶ was issued to one Rosalinda E. Techico (Techico). Upon investigation, Spouses Cabigao found out that a Deed of Absolute Sale⁷ involving the subject property was purportedly executed by Jocelyn Cabigao in favor of Techico; and that the latter mortgaged the subject property to Malayan Bank Savings and Mortgage Bank (Malayan Bank) to secure a loan in the amount of ₱13 Million.⁸

Spouses Cabigao, as the real owners, then filed with the RTC a Complaint for Annulment of Titles and Other Documents, Damages, and Attorney's Fees⁹ (Complaint) against Techico, Malayan Bank, and the Register of Deeds of Meycauayan, Bulacan to question the Deed of Absolute Sale and the mortgage constituted on the subject property.¹⁰ They alleged in the Complaint that the real estate mortgage executed between Techico and Malayan Bank was null and void considering that Techico was not the owner of the subject property; thus, making Malayan Bank a mortgagee in bad faith for its failure to verify the identity of the registered owners.¹¹ Spouses Cabigao also sought the issuance of a writ of preliminary injunction against Malayan Bank as the highest bidder during the foreclosure proceedings favorably granted by the RTC.¹²

In response, Malayan Bank countered that it conducted due diligence to ascertain the identity of Techico, her financial capacity, and the property that was offered as security.¹³ It contended that it verified the authenticity of TCT No. 040-2010003403 with the Registry of Deeds and conducted an ocular inspection to confirm the genuineness of the

⁵ Records, Vol. I, pp. 18-21.

⁶ *Id.* at 25-26.

⁷ Records, Vol. II, pp. 487-493.

⁸ Records, Vol. I, pp. 52-55.

⁹ *Id.* at 1-11.

¹⁰ Further impleaded as defendants are Homer C. Razado and Country Rural Bank of Tagig, Inc. with respect to another property of spouses Cabigao registered in their name as TCT No. T-282257 (M), *id.*

¹¹ *Id.* at 5-6.

¹² See Order dated April 1, 2013 of Branch 78, Regional Trial Court (RTC), Malolos City, Bulacan, records, Vol. II, pp. 582-529.

¹³ *Id.* at 351-356.

title to the property and its owner and actual occupant.¹⁴ Malayan Bank insinuated that assuming that there was fraud in the issuance of the title, it was impossible for it to detect the fraud given that it was the Registry of Deeds itself that issued and certified the genuineness of the title.¹⁵

During the scheduled pre-trial conference, Malayan Bank failed to appear despite due notice and also failed to submit any pre-trial brief, judicial affidavits, and documentary evidence;¹⁶ thus, the RTC allowed the presentation of evidence *ex parte*.

Ruling of the RTC

In the Decision¹⁷ dated August 19, 2016, the RTC found that Malayan Bank was neither a mortgagee in good faith nor a purchaser for value. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, to wit:

- 1) Declaring the deeds of sale dated September 15, 2010 and September 23, 2010 as null and void;
- 2) Declaring Transfer Certificate of Title No. 0402010004253 and Transfer Certificate of Title No. 040-2010003403 in the name of the defendant Homer Rozado and Rosalinda Techico null and void;
- 3) Declaring the real estate mortgage dated November 22, 2010 executed by the defendants Rosalinda Techico and Malayan Mortgage and Savings Bank and the real estate mortgage dated December 15, 2010 executed by the defendant Homer Razado and Country Rural Bank of Tagig, Inc., and all other documents or transactions that emanated therefrom, as null and void;
- 4) Ordering the Register of Deeds of Meycauayan, Bulacan to cancel Transfer Certificate of Title No. 040-2010004253 in the name of the defendant Homer Razado and Transfer Certificate of Title No. 040-2010003403 in the name of the defendant Rosalinda Techico;
- 5) Reinstate Transfer Certificates of Title No. 282257 (M) and T-282258 (M) in the name of the plaintiffs without any other encumbrance other than those annotated therein prior to its illegal cancellation;

¹⁴ *Id.* at 353-354.

¹⁵ *Id.* at 355.

¹⁶ See Order dated August 29, 2013 of Branch 84, RTC, Malolos City, Bulacan, records, Vol. III, pp. 1058-1059.

¹⁷ Records, Vol. IV, pp. 1185-1199.

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- 6) Declaring the defendants solidarily liable to pay the plaintiffs actual damages in the amount of P100,000.00, moral damages in the amount of P500,000.00, exemplary damages in the amount of P200,000.00 and attorney's fees and expenses of litigation in the amount of P100,000.00;
- 7) Ordering the defendants to pay the cost [of] suit; and
- 8) Declaring the writ of preliminary injunction issued by this Court dated April 22, 2013 as permanent enjoining the defendants to cease and desist from any act of transferring the title of the property covered by Transfer Certificate of Title No. 282258 (M).

SO ORDERED.¹⁸

In an Order¹⁹ dated January 5, 2017, the RTC denied Malayan Bank's Motion for Reconsideration.

Ruling of the CA

Country Rural Bank of Taguig, Inc., impleaded as one of the defendants in the case, appealed the RTC's Decision. However, the CA dismissed it for its failure to file its Appellant's Brief.²⁰

Malayan Bank filed its appeal. The CA disregarded the procedural defects of the appeal.

In the Decision²¹ dated April 24, 2019, the CA affirmed the findings of the RTC that Malayan Bank acted in bad faith when it approved the loan application of Techico.²² It agreed with the conclusion of the RTC that Malayan Bank failed to discharge its affirmative defense of good faith.

In its Resolution²³ dated September 2, 2019, the CA denied the Motion for Reconsideration filed by Malayan Bank.

Aggrieved by the CA Decision, Malayan Bank filed the instant

¹⁸ *Id.* at 1198-1199.

¹⁹ *Id.* at 1363-1365.

²⁰ See Partial Entry of Judgment dated May 4, 2018, CA *rollo*, pp. 116-117.

²¹ *Rollo*, pp. 35-49.

²² *Id.* at 48.

²³ *Id.* at 33-34.

petition asserting its standing as a mortgagee in good faith and its entitlement to its mortgage lien. Malayan Bank reiterated that it observed good faith in the mortgage transaction; that upon examination of the title offered by Techico as security for her loan, it found neither infirmity nor defect; that they verified Techico's financial capability and credit worthiness; and that they exercised due diligence in ascertaining the ownership of the subject property.²⁴

Our Ruling

The petition lacks merit.

At the outset, the Court notes that the issue of whether a mortgagee is in good faith generally cannot be entertained in a petition filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.²⁵ The ascertainment of good faith or the lack thereof and the determination of negligence are factual matters which lay outside the scope of a petition for review on *certiorari*.²⁶ Moreover, factual findings of courts, when adopted and confirmed by the CA, are final and conclusive on the Court unless these findings are not supported by the evidence on record.²⁷

As in this case, there is no showing that the CA committed any misapprehension of facts that would require the Court to review and overturn its factual findings; more importantly, its conclusion of facts which are not only consistent with the trial court, was also amply supported by the evidence on record. The Court is convinced that the CA committed no error when it affirmed the RTC's conclusion that Malayan Bank was not a mortgagee in good faith.

The settled rule that persons dealing with registered lands can rely solely on the certificate of title does not apply to banks.²⁸ Banks are expected to exercise more care and prudence than private individuals in their dealings, even those involving registered lands, since their business

²⁴ *Id.* at 18-23.

²⁵ *Arguelles, et al. v. Malarayat Rural Bank, Inc.*, 730 Phil. 226, 234 (2014), citing *PNB v. Heirs of Militar*, 504 Phil. 634, 643 (2005), citing *Sps. Uy v. Court of Appeals*, 411 Phil. 788, 790 (2001).

²⁶ *Id.*, citing *PNB v. Heirs of Estanislao and Deogracias Militar*, 526 Phil. 788, 799-800 (2006).

²⁷ *Producers Bank of the Phil. v. Court of Appeals*, 445 Phil. 702, 711 (2003), citing *Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 154 (2000) and *PNCC v. Mars Construction Enterprises, Inc.*, 382 Phil. 510, 522 (2000).

²⁸ *Philippine Trust Co. v. Hon. Court of Appeals*, 650 Phil. 54, 67 (2010). Citations omitted.

are impressed with public interest.²⁹ As correctly found by the CA, Malayan Bank cannot hide behind the “authenticity” of TCT No. 040-2010003403 as it had knowledge of the fact that the subject property was not yet registered in the name of Techico at the time of her application for a loan.³⁰

Furthermore, the evidence presented by the Spouses Cabigao established the irregularity in the issuance of TCT No. 040-2010003403 as shown by Techico’s failure to surrender for its cancellation the original copy of TCT No. 282258 (M), which remained in the possession of Spouses Cabigao and the tax clearances which were shown to be fictitious. The incontrovertible pieces of evidence adduced in the court below demonstrated that the questioned Deed of Absolute Sale was falsified considering that the Spouses Cabigao neither executed nor participated in the execution thereof as they denied selling the subject property to Techico. Even the lack of authority of the person who appeared to have notarized the questioned Deed of Absolute Sale was substantiated after evidence was presented to show that he was neither a notary public for Pasig City in 2010, nor was he a member of the Philippine Bar. In the same vein, the haste in the execution of the real estate mortgage on the subject property which is barely two months after its alleged sale and transfer of registration in favor of Techico is a badge of bad faith which should have placed Malayan Bank on guard before it proceeded with the transaction.

The Court is likewise convinced that the Inspection and Appraisal Report³¹ prepared by Malayan Bank is a telling document as it was clearly reflected therein that at the time of Techico’s application for loan, the subject property used as collateral was still registered in the name of Jocelyn S. Cabigao, married to Joseph C. Cabigao under TCT No. 282258 (M). Indeed, Malayan Bank was shown to be wanting in the exercise of extraordinary diligence required of it as a banking institution in approving the mortgage contract in favor of Techico. The mere fact that Malayan Bank accepted the subject property as security still under the name of Jocelyn S. Cabigao, married to Joseph Cabigao most certainly proves that it did not follow the standard operating procedure.

Lastly, there was no violation of Malayan Bank’s right to participate in the proceedings below as it was able to timely move for the

²⁹ *Id.*

³⁰ *Rollo*, p. 146.

³¹ *Records*, Vol. II, p. 616.

reconsideration of the RTC's Decision dated August 19, 2016, despite lack of notice of the Formal Offer of Evidence; it even, thereafter, filed a Notice of Appeal, which was granted by the trial court—remedies which are available to a party declared in default. Under Section 5, Rule 18 of the Revised Rules of Court, a defendant's failure to appear during pre-trial shall be a cause to allow the plaintiff's presentation of evidence *ex parte* and the rendition by the trial court of a judgment based on the evidence offered. In the old Rule,³² a defendant who fails to appear in the pre-trial may be considered "*as in default*."³³ However, the Supreme Court, in *Ultra Mar Aqua Resource, Inc. v. Fermida Construction Services*,³⁴ explained that with the amended provision, the phrase "*as in default*" was deleted, the purpose of which is "one of semantical propriety or terminological accuracy as there were criticisms on the use of the word default in the former provision since that term is identified with the failure to file a required answer, not appearance in court."³⁵ Thus, while the order of default no longer obtains if a defendant fails to appear for pre-trial, its effects were nevertheless retained.³⁶ For its absence during the pre-trial, in addition to its failure to file a pre-trial brief, Malayan Bank lost its standing in court and its right to adduce evidence in its defense. However, akin to a party declared in default, Malayan Bank retained its right to appeal albeit it is proscribed from seeking a modification or reversal of the assailed decision on the basis of its own evidence, for if it were otherwise, it would thereby be allowing it to regain its right to adduce evidence, a right which it lost in the trial court when the plaintiff was allowed to present evidence *ex parte*, and which order it failed to have vacated.³⁷

WHEREFORE, the petition is **DENIED**. The Decision dated April 24, 2019 and the Resolution dated September 2, 2019 of the Court of Appeals in CA-G.R. CV No. 108813 are hereby **AFFIRMED**.

Let this serve as a reminder for the banking industry to exercise utmost diligence at all times and to observe the highest meticulous attention to detail.

³² Section 2 of Rule 20 of the Rules of Court states that: "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

³³ Willard B. Riano, *Civil Procedure (A Restatement for the Bar)*, First edition 2007, pp. 305-306.


³⁴ 808 Phil. 648-661 (2017).

³⁵ *Id.*

³⁶ *Id.*


³⁷ *Id.*

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL I. HERNANDO
Associate Justice




EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

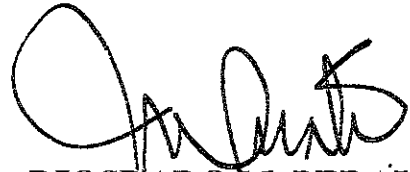
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
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.



DIOSDADO M. PERALTA
Chief Justice

