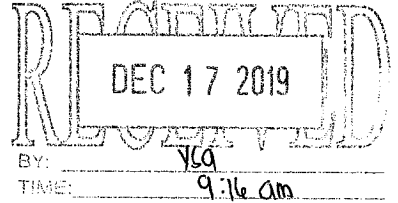




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **16 October 2019** which reads as follows:

"G.R. No. 226350 — BANK OF COMMERCE, petitioner, versus HEIRS OF PRESENTACION B. CINCO NAMELY: AMELIA CINCO, BELMA CINCO MONDAYA, CYNTHIA CINCO QUIAMCO, DELGIE CINCO PEPINO, FELISA FLORIDA B. CINCO AND HELEN CINCO B. PACLIBAR, respondents.

x-----x

After a careful review of the instant Petition¹ and its annexes, as well as the March 28, 2016 Decision² of the Court of Appeals (CA) in CA-G.R. CV. No. 02710, the Court resolves to **DENY** the same for lack of merit.

The Court agrees with the CA that respondents sufficiently proved that Presentacion B. Cinco could not have executed the Special Power of Attorney (SPA) on January 19, 1995 and could not have appeared before the Notary Public on January 20, 1995, as she was abroad at that time.

Having established the irregularity of the execution and notarization of the instant SPA,

the presumption of regularity accorded by law to notarized documents can no longer apply and the questioned SPA [must] be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that '[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either (a) [b]y anyone who saw the document executed or written, or (b) [b]y evidence of the genuineness of the signature or handwriting of the maker.³

Correspondingly, the burden of evidence shifted to Bank of Commerce (BOC) to prove the authenticity and due execution of the subject SPA. Unfortunately, it failed to discharge this burden.

BOC's claim that it was a mortgagee in good faith also lacks merit. In *Bank of Commerce v. Spouses San Pablo, Jr.*,⁴ the Court explained:

Indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that,

¹ *Rollo*, pp. 47-69.

² *Id.* at 12-26. Penned by Associate Justice Gabriel T. Ingles, and concurred in by Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi.

³ *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, 740 Phil. 35, 49 (2014).

⁴ 550 Phil. 805 (2007).

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after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title. This is not the situation in the case at bar since Santos was not the registered owner for he merely represented himself to be the attorney-in-fact of the spouses San Pablo.

In cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee. As we have enunciated in the case of *Abad v. Guimba*:

While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is not a registered owner is expected to examine not only the certificate of title but all the factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land. Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser."

This principle is applied more strenuously when the mortgagee is a bank or a banking institution. In the case of *Cruz v. Bancom Finance Corporation*, we ruled:

Respondent, however, is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. **Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.**⁵ (Emphasis and underscoring supplied)

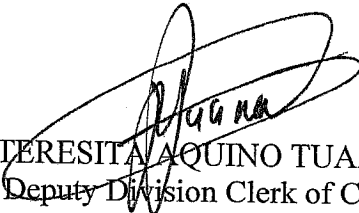
As the person applying for the loan is other than the registered owner of the property being mortgaged, it was incumbent upon BOC to make inquiries into and confirm the capacity of respondent Felisa Florida B. Cinco (Felisa) to mortgage the subject property. In addition, BOC failed to observe

⁵ Id. at 821-822.

the required degree of diligence in ascertaining the genuineness and the extent of the authority of Felisa to mortgage the subject property. In view of the foregoing, the Petition is denied.

SO ORDERED. "

Very truly yours,


 TERESITA AQUINO TUAZON
 Deputy Division Clerk of Court *with* 12/11
 12 DEC 2013

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HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 6
 Cebu City
 (Civil Case No. CEB-28321)

JUDGMENT DIVISION (x)
 Supreme Court, Manila

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