



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

SPOUSES DANILO I. YABUT and  
NELDA YABUT, represented by  
their attorney-in-fact, MANUEL C.  
YABUT,

Petitioners,

G.R. No. 243470

Present:

PERALTA, CJ.,  
*Chairperson,*  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

MICHELLE C. NACHBAUR,  
Respondent.

Promulgated:

JAN 12 2021

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DECISION

CARANDANG, J.:

Before Us is a Petition for Review on *Certiorari*<sup>1</sup> filed by petitioner Spouses Danilo and Nelda Yabut (spouses Yabut), represented by their son, Manuel C. Yabut (Manuel) assailing the Decision<sup>2</sup> dated July 20, 2018 of the

<sup>1</sup> *Rollo*, pp. 26-48.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Danton Q. Bueser and Henri Jean Paul B. Inting (now a Member of this Court); *id.* at 8-19.

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Court of Appeals (CA) in CA-G.R. CV No. 109165 affirming the Decision<sup>3</sup> dated June 27, 2016 of the Regional Trial Court (RTC) of Manila, Branch 55 in Civil Case No. 08-119524, which dismissed the complaint<sup>4</sup> for annulment of the Special Power of Attorney<sup>5</sup> (SPA) and Deed of Real Estate Mortgage<sup>6</sup> (REM) executed by Anita Ignacio<sup>7</sup> (Anita) in favor of Michelle C. Nachbaur (respondent).

### Facts of the Case

Spouses Yabut, represented by their son Manuel alleged that Jose So and Antonio So (brothers So) were the owners of a parcel of land and improvements thereon located at 1150 Lardizabal St., Sampaloc, Manila covered by Transfer Certificate of Title (TCT) No. 196082<sup>8</sup> (subject property), registered in the name of Antonio So (Antonio), married to Anita and Jose So. Manuel claimed that since 2001, he has been in possession of the property by virtue of a contract of lease.<sup>9</sup>

On July 2, 2007, brothers So sold the subject property to spouses Yabut for ₱3,300,000.00.<sup>10</sup> The original title of the subject property was given to Manuel by Antonio after the payment of the purchase price.<sup>11</sup> Thereafter, the brothers So paid the corresponding taxes and obtained the Certificate Authorizing Registration and Tax Clearance Certificate from the Bureau of Internal Revenue.<sup>12</sup>

To cause the transfer of the title of the property in his parents' name, Manuel engaged the services of a certain Fe Manubay (Fe). Manuel also gave the original title, the Certificate Authorizing Registration and Tax Clearance Certificate to Fe in order to facilitate the transfer. For this, Manuel paid Fe an amount of ₱20,000.00. Then, sometime November 2007, Fe delivered to Manuel TCT No. 271840, the purported new title to the subject property. The said title however was registered in the name of Manuel.<sup>13</sup>

Sometime January 2008, a group of people arrived at the subject property and sought permission from Manuel to conduct an ocular inspection. It was then that Manuel learned that the subject property also became the subject of a mortgage agreement. The group of people who conducted the ocular inspection were armed with an original Owner's Duplicate Certificate of TCT No. 196082, which was annotated with an SPA and a REM. Manuel inquired with the brothers So as to whether they executed an SPA and a REM but the latter denied having executed those documents. Alarmed, Manuel went

<sup>3</sup> Penned by Judge Josefina E. Siscar; *CA rollo*, pp. 45-55,

<sup>4</sup> Records, pp. 1-7.

<sup>5</sup> Id. at 24-25.

<sup>6</sup> Id. at 26-27.

<sup>7</sup> Sometimes referred in the records as "Anita So."

<sup>8</sup> Records, p. 13.

<sup>9</sup> *Rollo*, pp. 8-9.

<sup>10</sup> Records, pp. 14-16.

<sup>11</sup> TSN dated August 13, 2010, p. 59.

<sup>12</sup> *Rollo*, p. 29.

<sup>13</sup> Id. at 9, 29; *CA rollo*, pp. 47-48.

to the Register of Deeds of Manila (RD) to verify the title given to him by Fe and he learned that TCT No. 271840 under his name was fake.<sup>14</sup>

Manuel asked Fe about the fake title. Fe then told Manuel that she will return the original title and the amount of ₱10,000.00 to Manuel. The promissory note<sup>15</sup> executed by Fe in favor of Manuel to the effect that she will return the amount of ₱10,000.00 and return TCT No. 196082 was presented during the trial by respondent.<sup>16</sup>

Fe, however, failed to return the ₱10,000.00 and the title. Sometime in 2009, Manuel filed a case for *estafa* and falsification against Fe. To protect petitioners' claim to the property, Manuel caused the annotation of an Adverse Claim over the property.<sup>17</sup>

Meanwhile, on November 15, 2007, an SPA was allegedly executed by the brothers So in favor of Anita authorizing her to mortgage the property. Thus, on the strength of the SPA, Anita mortgaged the subject property and executed a REM<sup>18</sup> and a Promissory Note<sup>19</sup> on December 6, 2007, to secure the loan obtained by the brothers So from a certain Michelle Nachbaur in the amount of ₱800,000.00.<sup>20</sup>

According to respondent, she came to know Anita through her sister-in-law, Sarah O. Vitaliano (Sarah). Anita's broker, Cora Ladiana (Cora) contacted Manuela Otrera (Manuela), Sarah's mother, to ask if Manuela knew someone who was willing to lend money to be secured by a real estate mortgage. Sarah then referred Anita to the respondent. The latter at first was not interested, but she eventually agreed considering that the loan will only be for a short period and because Anita badly needed money for the hospitalization of her husband.<sup>21</sup>

Respondent asked Sarah to verify the title of the property if the same is clean and to verify if Anita has the authority to mortgage the property. Likewise, respondent asked Sarah to make an actual inspection of the subject property. After verifying that Anita had the authority to mortgage the property and after inspecting the title and the property were clean, Manuela, Cora, Anita and Norayda Palugod (Norayda) went to respondent's house on December 6, 2007. Anita signed the real estate mortgage and promissory note. To confirm the identification of Anita, the latter presented her company ID and Postal ID. Thereafter, Anita and the others went to the RD to have the REM and the SPA were annotated, Anita went back to respondent's house and surrendered the original title with its annotations and the tax declaration. In turn, respondent gave ₱760,000.00 to Anita after deducting the 5% interest.

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<sup>14</sup> Id.; CA *rollo*, pp. 45-46.

<sup>15</sup> Records, p. 342.

<sup>16</sup> *Rollo*, pp. 10-12.

<sup>17</sup> Id. at 10.

<sup>18</sup> Records, pp. 26-27.

<sup>19</sup> Id. at 28.

<sup>20</sup> *Rollo*, pp. 9, 30; CA *rollo*, p. 46.

<sup>21</sup> CA *rollo*, pp. 49-50.

Anita also issued seven postdated checks to respondent. All of the checks however bounced.<sup>22</sup>

Manuel then filed a case against respondent for the annulment of the SPA, the REM and to surrender the original owner's duplicate copy of TCT No. 196082.<sup>23</sup> To support his claim that the brothers So did not execute any SPA in favor of Anita, Manuel presented the affidavits of the brothers So and Anita to that effect.<sup>24</sup> During the trial, the brothers So and Anita categorically denied that the signatures appearing on the SPA, REM and promissory note were their signatures. They testified that the genuine signatures were those on the Deed of Absolute Sale in favor of spouses Yabut and their affidavits.<sup>25</sup>

### **Ruling of the Regional Trial Court**

In a Decision<sup>26</sup> dated June 27, 2016, the RTC ruled in favor of respondent. The RTC ruled that the claim of forgery was not established by clear and convincing evidence. Further, the RTC found that respondent is a mortgagee in good faith since she has no notice of any lien or encumbrance on the title. The torrens title being incontrovertible and indefeasible, respondent was only charged with notice only of such burdens and claims as are appearing on the title. In the absence of any circumstance that would arouse suspicion, respondent can rely on the certificate of title. Since the deed of absolute sale in favor of spouses Yabut was not annotated in the title, the same does not bind or affect respondent.<sup>27</sup> Thus:

WHEREFORE, PREMISES CONSIDERED, the instant complaint is hereby DISMISSED.

The counterclaim of defendant Michelle C. Nachbaur on the payment of attorney's fees is GRANTED.

Plaintiffs are ordered to pay the defendant fifty thousand pesos (P50,000.00) as and for attorney's fees.

SO ORDERED.<sup>28</sup> (Emphasis omitted)

### **Ruling of the Court of Appeals**

In a Decision<sup>29</sup> dated July 20, 2018, the CA affirmed the ruling of the RTC. It ruled that since the sale was not registered, the sale cannot affect third

<sup>22</sup> Id.

<sup>23</sup> Complaint for Annulment of Special Power of Attorney and Deed of Real Estate Mortgage and Surrender of Withheld Original Owner's Duplicate Certificate of Title No. 196082-IND. of the Registry of Deeds for the City of Manila pursuant to Section 107 of Presidential Decree No. 1529 (Property Registration Decree); records, pp. 1-7.

<sup>24</sup> CA rollo, p. 49.

<sup>25</sup> Rollo, p. 30; CA rollo, pp. 49, 75.

<sup>26</sup> Supra note 3.

<sup>27</sup> CA rollo, pp. 52-54.

<sup>28</sup> Id. at 55.

<sup>29</sup> Supra note 2.

persons. The act of registration is the operative act that convey or affect the land insofar as third persons are concerned, as such, the sale between the brothers So and petitioners has no effect on respondent. Further, respondent does not need to look beyond the title to look for possible hidden defects or encumbrances on the property. As such, respondent is a mortgagee in good faith.<sup>30</sup>

### **Petitioners' Arguments**

Spouses Yabut claimed that the RTC erred in ruling that they did not establish by clear and convincing evidence that the signatures appearing on the REM and the SPA were forged. The brothers So and Anita categorically testified that the signatures appearing on the Deed of Absolute Sale were their genuine signatures. Also, the Joint Affidavit of the brothers So and the Affidavit of Anita were also presented to show the glaring disparity of the genuine signatures appearing on those documents as compared to the REM, SPA and the promissory note. Therefore, the fact that the REM and the SPA were spurious were sufficiently proved by spouses Yabut. Be it noted that the brothers So and Anita categorically testified during trial that the signatures on the REM and the SPA were not their signatures. Since the REM and the SPA were spurious, respondent has not acquired any legal right and cannot be presumed to be a mortgagee in good faith.<sup>31</sup>

Further, spouses Yabut alleged that the RTC erred in ruling that respondent was a mortgagee in good faith. Respondent failed to prove that she exercised due diligence in entering into the REM. She should have exercised a greater diligence in verifying the property and the authority of Anita, since she was transacting with an agent.<sup>32</sup>

### **Respondent's Arguments**

Respondent argued that the RTC correctly held that the claim of forged signatures was not properly proven by a clear and convincing evidence. The mere denial of the brothers So and Anita in the absence of a comparative presentation of their genuine signatures does not constitute evidence of forgery. Also, the ruling that respondent was a mortgagee in good faith is correct. A mortgagee has the right to rely on the certificate of title and in the absence of any suspicion, has no obligation to undertake further investigation.<sup>33</sup>

### **Issue**

Whether respondent is a mortgagee in good faith such that the real estate mortgage is superior than the unregistered sale.

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<sup>30</sup> *Rollo*, pp. 15-18.

<sup>31</sup> *Id.* at 35-42.

<sup>32</sup> *Id.* at 42-47.

<sup>33</sup> *Id.* at 95-104.

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### Ruling of the Court

At the outset, the issues raised by spouses Yabut in the present petition are questions of fact which normally are beyond this Court's jurisdiction. Questions of fact which require a re-evaluation of the evidence cannot be entertained in a petition under Rule 45. However, such rule is not absolute. When the judgment is based on a misapprehension of facts and when the findings of facts of the appellate court are contradicted by the evidence, such as in this case, this Court can examine the records and facts of the case.<sup>34</sup>

Perusal of the records of the case show that the Deed of Absolute Sale and the Affidavits of Antonio, Jose and Anita, coupled by their categorical testimony that their signatures were forged, as compared to the SPA, REM, and promissory note, makes a re-examination of the evidence necessary.

**The forged signatures of the brothers  
So and Anita were sufficiently proved.**

Forgery cannot be presumed. It must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery.<sup>35</sup> The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.<sup>36</sup>

The RTC and the CA erred in ruling that there are no comparative signatures showing the genuine signatures of the brothers So and Anita where the Court can examine the genuine and the forged signatures. In this case, to prove that the signatures of the brothers So and Anita appearing on the SPA,<sup>37</sup> REM<sup>38</sup> and promissory note<sup>39</sup> are all forgeries, spouses Yabut presented the Deed of Absolute Sale<sup>40</sup>, the Joint Affidavit<sup>41</sup> of the brothers So and the Affidavit<sup>42</sup> of Anita So. The brothers So and Anita were categorical in testifying during the trial that the signatures appearing on the Deed of Absolute Sale and the Affidavits are their genuine signatures while those on the SPA, REM and promissory note are not their signatures.

Settled is the fact that the presentation of handwriting experts to prove forgery is not required. The judge exercises independent judgment on the issue of authenticity of signatures.<sup>43</sup> When the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not

<sup>34</sup> *Sps. Miano v. Manila Electric Company*, 800 Phil. 118, 123 (2016), citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990).

<sup>35</sup> *Sps. Orsolino v. Frany*, 808 Phil. 212, 219 (2017).

<sup>36</sup> *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753, 763 (1998).

<sup>37</sup> Records, p. 24.

<sup>38</sup> Id. at 26-27

<sup>39</sup> Id. at 28.

<sup>40</sup> Id. at 14-16.

<sup>41</sup> Id. at 29-30.

<sup>42</sup> Id. at 31-32.

<sup>43</sup> *Philippine Trust Company v. Gabinete*, 808 Phil. 297, 309-310 (2017), citing *Mendoza v. Fermin*, 738 Phil. 429, 441 (2014).

ordinarily escape notice or detection from an unpracticed observer, resort to technical rules is no longer necessary and the instrument may be stricken off for being spurious. In other words, when so established and is conspicuously evident from its appearance, the opinion of handwriting experts on the forged document is no longer necessary.<sup>44</sup>

Our review of the documents would readily show that there is apparent dissimilarity between the signatures on the Deed of Absolute Sale, the Joint Affidavit of the brothers So and the Affidavit of Anita, and the SPA, REM, and promissory note. In fact, the signatures are entirely different with each other such that the conclusion that the signatures on the questioned documents were made by another person can be reasonably presumed. Therefore, the SPA, REM, and promissory note can be declared as spurious. Be it noted that the documents were all executed merely months apart,<sup>45</sup> thus, a comparison between the documents can result to an accurate analysis and conclusion.

**Respondent is not a mortgagee in good faith.**

Nevertheless, a forged deed does not necessarily mean that it cannot confer any right. A fraudulent or forged deed may give rise to a valid title in the hands of an innocent third person. The determination of whether respondent's real estate mortgage is superior than the deed of sale lies not on whether the deed of sale was registered or not, but rather on the determination whether respondent is a mortgagee in good faith or in bad faith.

The "mortgagee in good faith" rule is based on the principle that persons dealing with a property covered by a torrens certificate of title are not required to go beyond what appears on the title,<sup>46</sup> in the absence of any sign that might arouse suspicion.<sup>47</sup> This doctrine, however, does not apply when the mortgagee does not directly deal with the registered owner, such as in this case. It is incumbent upon the mortgagee to exercise greater care and higher degree of prudence in dealing with the mortgagor.<sup>48</sup> One who transacts with another who is not the registered owner of the property, is expected to examine not only the certificate of title but all factual circumstances necessary for to determine if there are any flaws in the title of the transferor, or in the capacity to transfer the land.<sup>49</sup>

Here, respondent is not a mortgagee in good faith since she failed to investigate the true nature of the property despite knowledge of circumstances that cause suspicion.

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<sup>44</sup> *Mendoza v. Fermin*, 738 Phil. 429, 442 (2014).

<sup>45</sup> Special Power of Attorney executed on November 15, 2007; Deed of Real Estate Mortgage executed on December 6, 2007; Promissory Note executed on December 6, 2007.

<sup>46</sup> *Philippine Banking Corporation v. Dy*, 698 Phil. 750, 757 (2012).

<sup>47</sup> *Andres v. Philippine National Bank*, 745 Phil. 459, 474 (2014).

<sup>48</sup> *Dadis v. Sps. De Guzman*, 810 Phil. 749, 757 (2017).

<sup>49</sup> *Arguelles v. Malarayat Rural Bank, Inc.*, 730 Phil. 226, 236 (2014), citing *Abad v. Sps. Guimba*, 503 Phil. 321, 332 (2005).

*First*, respondent was merely dealing with an attorney-in-fact. Despite the presence of an alleged SPA from the registered owners, respondent should have inquired with the registered owners as to the extent of the authority of the attorney-in-fact, especially when the property is co-owned by two persons.

*Second*, respondent did not personally investigate the identity of the property. Respondent claims that she asked her sister-in-law to conduct inspection of the property. If indeed they conducted a thorough inspection of the property, it is impossible not to notice the occupation of Manuel in the property. The fact that Manuel is the actual possessor and occupant of the property is undisputed. Despite the presence of Manuel in the property, respondent failed to inquire as to the nature of Manuel's possession of the property. Respondent cannot simply turn a blind eye and claim ignorance of any defect in the title of the property when a simple investigation would have revealed that the property was previously sold to spouses Yabut by the registered owners.

*Third*, respondent was the one who presented the promissory note executed by Fe to Manuel stating that Fe will return the original title to Manuel. Rather than help respondent's claim, this even corroborates Manuel's testimony that the original owner's duplicate copy of the title was given to Fe for the purpose of registering the Deed of Sale. Be it noted that as testified by brothers So, the original owner's duplicate copy was already given to Manuel after the payment of the purchase price. Thereafter, for the purpose of transferring the title in the name of spouses Yabut, Manuel gave the title to Fe. These circumstances readily show that it is impossible for Anita to transact with respondent and hand over the title to the latter, when the title was already in the possession of Fe. Thus, in all probability the forgery was caused by Fe.

While We commiserate with the situation respondent is in, We are constrained to rule that the spurious REM, SPA and promissory note cannot grant respondent any right superior than the Deed of Absolute Sale in favor of the Yabut spouses. The issue in this case is not whether the Deed of Sale was registered in order to affect the land, but whether respondent was a mortgagee in good faith. As borne by the records, respondent failed to exercise the due diligence in dealing with an attorney-in-fact whose authority was derived from a spurious SPA. Further, respondent failed to fully investigate the title and condition of the land.

As to the cancellation of TCT No. 196082 in the name of brothers So and the issuance of a new title in the name of spouses Yabut, this Court cannot immediately order its issuance as there are other processes exclusive to the domain of the RD that spouses Yabut must comply and file.

**WHEREFORE**, the instant Petition is **GRANTED**. The Decision dated July 20, 2018 of the Court of Appeals in CA-G.R. CV No. 109165 is **REVERSED** and **SET ASIDE**. Accordingly, the Special Power of Attorney dated November 15, 2007, the Deed of Real Estate Mortgage dated December



6, 2007, and the Promissory Note dated December 6, 2007 are hereby **ANNULED** for being spurious.

The Register of Deeds of Manila is hereby **DIRECTED** to **CANCEL** the annotations in the title pertaining to the Special Power of Attorney dated November 15, 2007, the Deed of Real Estate Mortgage dated December 6, 2007, and the Promissory Note dated December 6, 2007.

Respondent Michelle C. Nachbaur is hereby **ORDERED** to **SURRENDER** to petitioners Spouses Danilo I. Yabut and Nelda Yabut, through their attorney-in-fact, Manuel Yabut, the Original Owner's Duplicate Copy of Transfer Certificate of Title No. 196082.

In the event that respondent Michelle C. Nachbaur is unable to surrender the Original Owner's Duplicate Copy of Transfer Certificate of Title No. 196082, the Register of Deeds of Manila is hereby **DIRECTED** to **ISSUE** a new Original Owner's Duplicate Copy of Transfer Certificate of Title No. 196082 free from any encumbrances pertaining to the Special Power of Attorney dated November 15, 2007, the Deed of Real Estate Mortgage dated December 6, 2007, and the Promissory Note dated December 6, 2007.

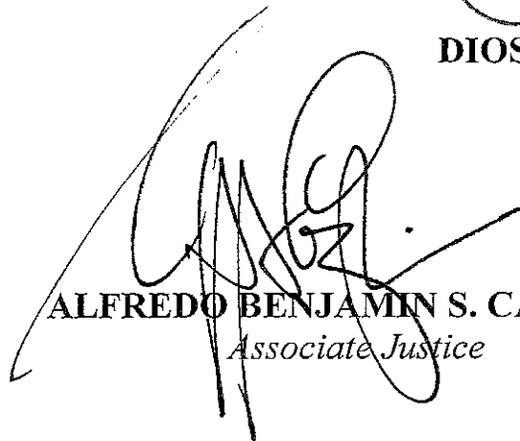
**SO ORDERED.**

  
ROSMAR D. CARANDANG  
*Associate Justice*

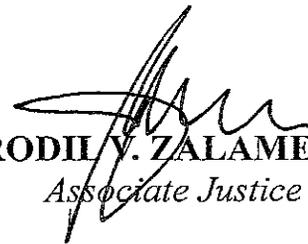
**WE CONCUR:**



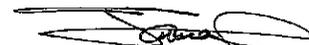
**DIOSDADO M. PERALTA**  
*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



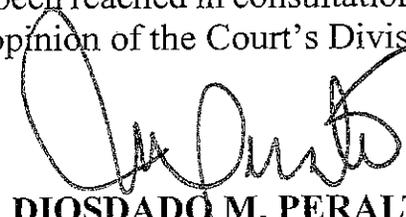
**RODIL V. ZALAMEDA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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*