

**G.R. No. 193804 – Spouses Nilo Ramos and Eliadora Ramos, *Petitioners*,
v. Raul Obispo and Far East Bank & Trust Co., *Respondents*.**

Promulgated:

FEB 27 2013

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DISSENTING OPINION

SERENO, CJ:

I respectfully dissent. While the *ponencia* affirms the findings of fact of the Court of Appeals and concludes that petitioner-spouses agreed to mortgage their property to secure Obispo's debt, I vote to uphold the trial court's factual conclusion that petitioner-spouses signed the mortgage contract in blank and were defrauded by Obispo, as they were unaware that their property would be used as collateral for his personal loan.

The disparity in our factual findings revolves around the issue of whether petitioner-spouses intended to be bound as accommodation mortgagors with respect to Obispo's credit line with Far East Bank & Trust co. (FEBTC). Intent, being a state of mind, is rarely susceptible of direct proof and must ordinarily be inferred from the parties' circumstances, conduct and unguarded expressions.¹ While the *ponencia* is correct in pointing out that the facts, as narrated by petitioner-spouses, are beyond the normal occurrence of events, their narration is not entirely incredible and implausible. To my mind, they have successfully painted an unfortunate but common picture of individuals who have placed their full trust in the wrong party and ended up being defrauded in the end.

Finding that there is a dearth of evidence to back up their story, the *ponencia* refuses to give credence to the testimonies of petitioner-spouses. I believe, however, that their unwavering testimonies, both on direct and cross-examination, suffice to establish their claims. Time and again, this Court has upheld convictions in criminal cases based on the sole, uncorroborated testimony of a single witness; there is no reason why we cannot similarly rely on clear and convincing testimonial evidence in a civil case.

In any event, while it may be argued that there may be reasonable doubt as to the actual occurrences in the instant case, a reading of the records firmly establishes that FEBTC failed to exercise the extraordinary diligence required from it as a banking institution. During trial, the bank officer who served as an instrumental witness to the real estate mortgage contract, and who had the duty to witness its execution, admitted that petitioner-spouses did not sign the contract in his presence, to wit:

¹ *Feeder International Line, Pte., Ltd. v. Court of Appeals*, 274 Phil. 1143 (1991).

Q: Mr. Witness, on this real estate mortgage there are two (2) signatures appearing under the words “Signed in the presence of”. Do you know these two (2) signatures?

A: Yes, sir. The signature of our manager at that time, Virginia Clemeno, sir.

Q: Your signature is on the left?

A: Yes, sir.

Q: And on the right is?

A: The signature of our manager sir.

x x x x

Q: Now, when you received the Mortgage Contract, **am I correct that Spouses Ramos did not sign the Mortgage Contract in your presence** because you had known them?

A: **Yes, sir. The signature [sic] were there already.**

Q: Just answer yes or no.

A: Yes, sir.

THE COURT:

They did not . . .

ATTY. VILLAVERT:

That Spouses Ramos did not sign in his presence, your Honor, and he answered yes.² (Emphases supplied)

Furthermore, the bank officer testified that it is the bank’s standard procedure that the real estate mortgage form is presented to him for signature after the mortgagors have accomplished it, after which he forwards the document to respondent bank’s legal department. His testimony shows:

Q: Mr. Witness, what is the bank procedure that is being done with respect to the execution and submission of the real estate mortgage?

A: The document has to be filled up and signed by the mortgagors before it was presented to us for our signature and then we sent it to our legal department.

Q: Is this the standard procedure that is followed?

A: Yes, sir.³

The signature of the bank officer as an instrumental witness to the real estate mortgage was not intended to be an idle ceremony or an empty mechanical act. By acting as witness to the instrument, he was attesting to the fact that the mortgagors actually signed the document in his presence.

² TSN, 4 December 2003, pp. 331-332; 335-336.

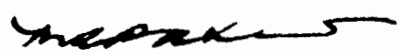
³ Id. at 332-333.

That he could take his role as an instrumental witness lightly leads to the conclusion that FEBTC was remiss in its duty to exercise the diligence required from it as a banking institution. That this procedure was the standard practice of respondent bank in processing loans and mortgages seals the finding of negligence on its part.

In *Philippine Trust Company v. Court of Appeals*,⁴ we have ruled that because the business of banks is imbued with public interest, they are expected to exercise more care and prudence than private individuals, even in cases involving registered lands. Banks, therefore, have the duty of proving that they have exercised **extraordinary diligence** in approving the mortgage contract in question.⁵

Had FEBTC been diligent enough, it could have prevented the unfortunate incident in question. As lender and mortgagee, it had the duty to ascertain whether petitioner-spouses had really agreed to become accommodation mortgagors with respect to respondent Obispo's loan. It could have required petitioner-spouses to personally appear and sign the mortgage contract before its representatives. It could have required Obispo to present a special power of attorney to prove that he had been authorized to constitute a third-party mortgage over petitioner-spouses' real property. It could even have made a phone call to petitioner-spouses to verify whether they did intend to mortgage their property to secure Obispo's debt. All these safeguards respondent bank failed to observe. Instead, it permitted its bank officers to act as instrumental witnesses, even if the mortgagors had not actually executed the mortgage contract in the officers' presence.⁶ It chose to rely solely on the signed mortgage contract, as well as the transfer certificate of title which was in petitioner-spouses' names, which were brought to the bank by Obispo without iota of evidence that he was authorized to do so.

In situations such as these, I believe that the interests of society would best be served if the economic risk of the transaction is placed on the negligent bank. Banks play a central role in the economic life of our society, and it is not without reason that we have placed upon them the burden of exercising extraordinary diligence when dealing with other economic actors. Thus, I vote to **GRANT** the instant Petition for Review, **SET ASIDE** and **REVERSE** the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 82378, and **REINSTATE** the Decision of the Regional Trial Court, Branch 82, Quezon City, in Civil Case No. Q-99-38988.


MARIA LOURDES P. A. SERENO
Chief Justice

⁴ G.R. No. 150318, 22 November 2010, 635 SCRA 518, 530.

⁵ *Id.*

⁶ TSN, 4 December 2003, p. 335.