



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 4, 2021, which reads as follows:*

**“G.R. No. 244439 (Asia United Bank Corporation, Petitioner, v. Angcotex Trading Corporation and Uni-Dravo Commercial Corporation, Respondents.)** – This resolves the Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court<sup>1</sup> seeking to annul and set aside the Decision<sup>2</sup> dated 28 February 2018 and Resolution<sup>3</sup> dated 28 January 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 103119. The CA denied Petitioner Asia United Bank Corporation’s (AUB) appeal through the assailed Decision and Resolution, due to its finding that the Third-Party Real Estate Mortgage (Third-Party REM) involved herein is null and void.

**Antecedents**

Respondent Angcotex Trading Corporation (Angcotex) is the registered owner of two (2) commercial lots located at northwest of 11<sup>th</sup> Avenue and M.H. del Pilar Street, Brgy. Grace Park, Caloocan with an aggregate area of 178.50 square meters covered by TCT Nos. C-300601 and C-300602 (subject properties).<sup>4</sup>

Sometime in 2001, respondent Uni-Dravo Commercial Corporation (Uni-Dravo) and Spouses Brigido Onlingkuan (Spouses Onlingkuan) obtained a loan from Asia Trust Development Bank (ATDB) in the amount of Php15,000,000.00. On 05 July 2001, by virtue of a Secretary’s Certificate dated 02 April 2001, Angcotex executed a Third-Party REM over the subject properties to secure the Php15,000,000.00 loan of Uni-Dravo and Spouses Onlingkuan with ATDB. The mentioned Third-Party REM was amended on

<sup>1</sup> *Rollo*, pp. 11-41.

<sup>2</sup> *Id.* at 42-51; penned by Associate Justice Jose C. Reyes, Jr. (a former Member of this Court), and concurred in by Associate Justices Franchito N. Diamante and Maria Elisa Sempio-Dy of the Fourth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 52-56. Penned by Associate Justice Maria Elisa Sempio-Dy and concurred in by Associate Justices Ramon R. Garcia & Franchito N. Diamante or Special Former Fourth (4<sup>th</sup>) Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 104-111.

15 September 2003 to limit the security to the loan of Uni-Dravo, as the latter assured the loans of Spouses Onlingkuan.<sup>5</sup>

Due to the failure of Uni-Dravo to pay the remaining obligation of Php7,344,640.16, ATDB filed on 06 December 2006, a Petition for Extra-judicial foreclosure pursuant to Act No. 3135<sup>6</sup> with the Office of the Clerk of Court and Ex-Officio Sheriff of Caloocan City. However, the foreclosure sale was postponed due to the intervention of Roberto Ang (Ang), a corporate officer of Angcotex, who negotiated for payment extensions.<sup>7</sup>

Despite Ang's intervention, the entire obligation inclusive of interest and penalties remained unpaid. During the foreclosure sale, ATDB emerged as the highest bidder with a bid amount of Php8,031,640.72. Thereafter, a Certificate of Sale was issued in favor of ATDB on 28 March 2007.<sup>8</sup>

In response to the impending foreclosure sale, Angcotex negotiated for the redemption of the subject properties through Letters dated 01 May 2007, 08 May 2007, 09 May 2007, and 21 May 2007. This negotiation however, never materialized. Meanwhile, ATDB registered the Certificate of Sale issued on its favor with the Registry of Deeds of Caloocan City on 23 May 2007.<sup>9</sup>

#### Proceedings before the RTC

To assail the validity of the foreclosure, a Complaint for Annulment of Mortgage, Accounting, and Damages (Complaint)<sup>10</sup> was filed by Angcotex on 18 June 2007 against ATDB, Uni-Dravo, Office of the Ex-Officio Sheriff of Caloocan RTC, and the Register of Deeds of Caloocan. The case was raffled to Branch 129, Regional Trial Court (RTC) of Caloocan, docketed as Civil Case No. 21834.

Service of Summons was made on ATDB on 30 August 2007. Needing for more time to prepare its Answer, ATDB filed three (3) motions for extension, the last of which was denied by the RTC. Consequently, the trial court declared ATDB in default on 03 April 2008.<sup>11</sup> ATDB filed a motion to set aside order of default on 08 May 2008, but this was denied by Order dated 04 June 2008.<sup>12</sup> The matter was elevated to the CA<sup>13</sup> and eventually to this Court,<sup>14</sup> both of which affirmed the order of default against ATDB.

<sup>5</sup> *Id.* at 71.

<sup>6</sup> Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES," approved on 06 March 1924.

<sup>7</sup> *Rollo*, p. 71.

<sup>8</sup> *Id.* at 71-72.

<sup>9</sup> *Id.* at 72.

<sup>10</sup> *Id.* at 57-70.

<sup>11</sup> *Id.* at 141-142.

<sup>12</sup> *Id.* at 207.

<sup>13</sup> *Id.* at 210-222.

<sup>14</sup> *Id.* at 224-225.

In establishing that the foreclosure is null and void, Angcotex argued that: (1) it cannot validly act as an accommodation third-party mortgagor, surety, or guarantor, as its Articles of Incorporation does not authorize guarantee of prepayment of loans of other persons; (2) it did not receive any benefit, consideration, or money in relation to the execution of the Third-Party REM; (3) a corporation cannot act as an accommodation party pursuant to the *ultra vires* doctrine; (4) the Third-Party REM is null and void as it is in violation of the trust fund doctrine; and (5) the signatures in the Secretary's Certificate purporting to authorize the Third-Party REM were all forged.<sup>15</sup> Angcotex presented its evidence *ex-parte* and filed its Formal Offer of Exhibits,<sup>16</sup> which were all admitted by the RTC.

To establish forgery, Angcotex presented a handwriting expert witness who testified that the signatures of the corporate officers of Angcotex, namely, Ms. Teresita Abustan and Mr. Romeo Abustan, on the Stockholder's Resolution and Secretary's Certificate were not written by the same persons.<sup>17</sup>

In the meantime, AUB acquired the interests of ATDB. As such, AUB filed a Motion for Substitution in replacement of ATDB as respondent, which was granted by the RTC through its order dated 17 May 2013.<sup>18</sup>

On 18 March 2014, the RTC granted the Complaint filed by Angcotex, *viz:*<sup>19</sup>

Wherefore, in judgment, the Court rules:

1. Declares the Deed of Real Estate Mortgage dated July 5, 2001, and the Amendment to the Real Estate Mortgage dated September 15, 2003, to be Null and Void.
2. The Foreclosure Sale concerning the properties situated in Brgy. Grace Park, Caloocan City, Metro Manila, covered by TCT No. C-300601 and C-300602 in the name of Angcotex Trading Corp., to be Void.
3. Cancels Certificate of Titles Nos. C-390217, and C-390218, in the name of Asiatrust Development Bank, and Reinstates TCT Nos. C-300601, and C-300602 in the name of Plaintiff Angcotex Corporation.
4. Orders Asiatrust Development Bank, its assigns or Successors-in-Interest, to account for whatever fruits it received from the property, if any, from the time it took possession of the property up to the finality of the Court's judgment, and
5. Defendants are ordered to pay P50,000.00 as, and by way of

<sup>15</sup> *Id.* at 235.

<sup>16</sup> *Id.* at 143-158.

<sup>17</sup> *Id.* at 236.

<sup>18</sup> *Id.* at 159.

<sup>19</sup> *Id.* at 71-84. Penned by Presiding Judge Thelma Canlas Trinidad-Pe-Aguirre.

Attorney's fees.

No pronouncement as to Costs.

SO ORDERED.<sup>20</sup>

The Motion for Reconsideration<sup>21</sup> filed by AUB on 22 April 2014 was likewise denied by the trial court through its Order dated 01 July 2014.<sup>22</sup> On 15 July 2014, AUB filed its Notice of Appeal pursuant to Rule 41 of the Rules of Court.<sup>23</sup>

### **Ruling of the CA**

Through its Decision dated 28 February 2018, the CA affirmed the Decision dated 18 March 2014 of the RTC and effectively denied the appeal of AUB:

WHEREFORE, the appealed Decision dated March 18, 2014 of the Regional Trial Court of Caloocan City, Branch 129, in Civil Case No. C-21834, is hereby **AFFIRMED**.

SO ORDERED.<sup>24</sup>

The Motion for Reconsideration<sup>25</sup> filed by AUB on 23 March 2018 was likewise denied by the CA through its Resolution<sup>26</sup> dated 28 January 2019. Hence, this Petition.

### **Issues**

Aggrieved, AUB is now before this Court raising the following issues: (1) Whether or not the Complaint should have been dismissed considering that Angcotex did not have any legal personality when it filed the Complaint against ATDB; (2) Whether or not ATDB should not be held liable for reasonably relying on what appeared to be in all indications, a valid authority to enter into the REM; and (3) Whether or not Angcotex is barred by estoppel or laches to question the validity of the Third-Party REM.<sup>27</sup>

### **Ruling of the Court**

The appeal is unmeritorious and must be denied. The findings of this Court shall be discussed *in seriatim*.

<sup>20</sup> *Id.* at 83-84.

<sup>21</sup> *Id.* at 160-168.

<sup>22</sup> *Id.* at 175.

<sup>23</sup> *Id.* at 176-180.

<sup>24</sup> *Id.* at 50.

<sup>25</sup> *Id.* at 395-407.

<sup>26</sup> *Id.* at 52-55.

<sup>27</sup> *Id.* at 21.

*As a consequence of having been declared in default, AUB can no longer present evidence to attack the legal personality of Angcotex*

In assailing the CA's Decision and Resolution, AUB raised that the Certificate of Registration of Angcotex having been revoked in year 2003, it did not have any legal personality to file the Complaint in 2007.<sup>28</sup> We, however, are not persuaded.

Assuming *arguendo* that there is merit to this argument, We agree with the CA that AUB is barred from questioning the legal personality of Angcotex. The issue on the SEC registration of Angcotex with the Securities and Exchange Commission (SEC) was raised by AUB in its Comment/Opposition<sup>29</sup> to the Urgent Motion to Dismiss filed by Angcotex for purposes of dismissing the appeal of AUB with the CA. In the said Comment/Opposition, AUB attached a Certification of Corporate Filing/Information purportedly issued by the SEC<sup>30</sup> to prove revocation of the SEC registration of Angcotex.

It is of no dispute that ATDB was declared in default by the RTC, which was even affirmed by this Court through a Resolution issued in the case of *Asiatrust Development Bank v. Angkotex Trading Corp.*<sup>31</sup> Although a party declared in default is not prohibited from appealing the judgment, this is only allowed based on limited grounds. This Court's ruling in the case of *Otero v. Tan*<sup>32</sup> can give guidance:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. **Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated.** In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals. (Emphasis supplied)

Attacking the legal personality of Angcotex would necessarily require

<sup>28</sup> *Id.* at 24.

<sup>29</sup> *Id.* at 244-252.

<sup>30</sup> *Id.* at 266.

<sup>31</sup> *Id.* at 224.

<sup>32</sup> 692 Phil. 714, 725-726 (2012) [Per J. Reyes].

the presentation of evidence on the part of AUB, as it did so through the presentation of the SEC Certification at the level of the CA. However, AUB is barred from doing so as it lost its right to adduce evidence when it was declared in default. Consequently, AUB can no longer present evidence to attack the legal personality of Angcotex.

*Findings of fact of trial courts as affirmed by the CA are accorded the highest degree of respect. In any case, as a bank, ATDB was required to exercise the highest degree of diligence in its dealings*

AUB also contends that ATDB should not be held liable for reasonably relying on what appeared to be, in all indications, a valid authority to enter into the REM.<sup>33</sup>

This argument is untenable.

Jurisprudence is replete with pronouncements that findings of fact of the trial courts affirmed by the CA are accorded the highest degree of respect and should not be disturbed on appeal.<sup>34</sup> Further, a petition for review under Rule 45 of the Rules of Court limits the resolution of this Court to questions of law.<sup>35</sup>

We find no cogent reason to disturb the findings of the RTC in this case, as affirmed by the CA in its assailed Decision:

Witness Josefina Perez, the Corporate Secretary of Angcotex when the questioned Secretary Certificates were executed, vehemently denied her signature appearing on the questioned Certificate dated April 2, 2001 (Judicial Affidavit, Records, Vol. VI, p. 183). She categorically stated that there was no board meeting called for the purpose of authorizing the execution of the third-party real estate mortgage on Angcotex properties (id. at p. 182). To support this assertion, Document Examiner Florenda Negre was presented to confirm that the signature of Josefina Perez on the Secretary Certificate dated April 2, 2001, reveals significant divergence in handwriting movement line, quality and stroke structures (See: Questioned Document Report No. 013-2008-A, Records, Vol. III, p. 39). Thus, Ms. Negre concluded that the signature appearing on the questioned Secretary Certificate and the submitted standard signature of Josefina Perez were not written by one and the same person (ibid.).

<sup>33</sup> Rollo, pp. 25-44.

<sup>34</sup> See *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679 (2005) [Per J. Sandoval-Gutierrez].

<sup>35</sup> See *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, 823 Phil. 1043 (2018) [Per J. Leonen], citing *Spouses Milano v. Manila Electric Co.*, 800 Phil. 118 (2016) [Per J. Leonen].

Another witness, Zenon Suarez, the notary public indicated in the questioned Secretary Certificate, likewise testified and denied that the signature appearing therein is his signature and that the Secretary Certificate dated April 2, 2001 is not found on p. 19 of his Notarial Record (Sec: Judicial Affidavit, Records, Vol. III, p. 61, identified as per TSN, September 30, 2010). This testimony was corroborated by another witness who testified that the questioned Secretary Certificates did not exist on file and did not form part of the notarial Record of Atty. Zenon Suarez.

And lastly, no less than the authorized signatories themselves, Romeo Abustan and Teresita Abustan denied that the signatures appearing in the Secretary Certificate (Records, Vol. II-A, p. 75) and the Stockholder's Resolution (*id.*, at p. 76) belong to them and that they never consented to the execution of the third-party real estate mortgage and its amendment, as in fact, there was no meeting called for that purpose (See: Judicial Affidavits, Records, Vol. III, pp. 9-22; 123-126 duly identified as per TSN, November 27, 2008). Their testimonies were further bolstered by the Document Examiner Florinda Garcia Negre, who concluded that there was variance between the respective questioned signatures and the standard signatures of Romeo and Teresita Abustan (TSN, February 14, 2011, pp. 13-14).

Because of the incidence of forgery of the April 2, 2001 Secretary Certificate, appellee Angcotex likewise referred for expert examination the subsequent Secretary Certificate dated August 27, 2003 and the Stockholder's Resolution which purportedly authorized the Amendment to the third-party real estate mortgage. Upon scientific comparison, it was found that there was variance in the strokes and quality of the signatures. Thus, based on Questioned Document Examination Report No. 013-2008 (Records, Vol. VI, pp. 331-332), it was concluded that the questioned signatures of Teresita Abustan and Romeo Abustan and their standard signatures were not written by one and the same persons.<sup>36</sup>

As Angcotex is a corporation, it can only consent and act through its board of directors through a corresponding board resolution issued for the purpose.<sup>37</sup> As the Secretary Certificates that would have authorized Angcotex to enter into the Third-Party REM were established as void, the Third-Party REM resulting therefrom is likewise void.

In any case, it is well established that banking institutions are expected to observe high standards of integrity and performance in all its transactions, so as not to erode the public confidence in the banking system.<sup>38</sup> AIDB failed to observe the required degree of caution in readily accepting the Third-Party REM without first ascertaining whether the board of directors of Angcotex properly authorized the transaction.

<sup>36</sup> *Rollo*, pp. 48.

<sup>37</sup> See *First Philippine Holdings Corporation v. Trans Middle East (Phils.) Equities, Inc.*, 622 Phil. 623 (2009) [Per J. Chico-Nazario].

<sup>38</sup> *Philippine National Bank v. Pike*, 507 Phil. 322 (2005) [Per J. Chico-Nazario]; *Philippine National Bank v. Chea Chee Choing*, 686 Phil. 760 (2012) [Per J. Del Castillo]; *Comsavings Bank (now GSIS Family Savings Bank) v. Capistrano*, 716 Phil. 547 (2013) [Per J. Bersamin]; *Development Bank of the Philippines v. Guarina Agricultural and Realty Development Corporation*, 724 Phil. 209 (2014) [Per J. Bersamin].

*AUB is barred from establishing estoppel and/or laches on the part of Angcotex on appeal*

Finally, AUB argues that Angcotex is barred by estoppel and/or laches to question the validity of the Third-Party REM. It claims that from the execution of the Third Party REM in 2001 up to the filing of the Complaint with the RTC in 2007, Angcotex never questioned the validity of the Third-Party REM.<sup>39</sup>

The argument can no longer be entertained.

As succinctly put by this Court in the case of *Spouses Rebamonte v. Spouses Lucero*:<sup>40</sup>

It is a well-settled principle that issues of fact and arguments not adequately brought to the attention of the lower courts will not be considered by the reviewing courts as they cannot be raised for the first time on appeal. Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal.

As pointed out by the CA, since raising the defense of estoppel and/or laches would necessarily deal with questions of fact, these matters should have been raised before the trial court.<sup>41</sup> It is a rudimentary principle of law that matters neither alleged in the pleadings nor raised during the proceedings before the lower courts cannot be ventilated for the first time on appeal “because it would be offensive to the basic rules of fair play and justice, and would be violative of the constitutional right to due process of the other party.”<sup>42</sup>

In respect of the right to due process of respondents herein, we are constrained to no longer entertain a belatedly raised defense.

**WHEREFORE**, premises considered, the Petition is **DENIED** for lack of merit and the Decision dated 28 February 2018 and Resolution dated 28 January 2019 of the CA in CA-G.R. CV No. 103119 are **AFFIRMED**.

<sup>39</sup> *Rollo*, pp. 25-44.

<sup>40</sup> G.R. No. 237812, 02 October 2019 [Per J. Caguioa].

<sup>41</sup> *Rollo*, p. 46.

<sup>42</sup> *Heirs of Lorenzo v. Land Bank of the Philippines*, 634 Phil. 9 (2010) [Per J. Carpio], citing *Dasch v. NLRC*, 208 Phil. 259, 272 (1983) [Per J. Carpio].



**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court JB 4/20/22*

ZAMBRANO GRUBA CAGANDA  
& ADVINCULA LAW OFFICES  
Counsel for Petitioner  
2/F 88 Corporate Center, Sedenor cor.  
Valero Streets, Salcedo Village  
1227 Makati City

COURT OF APPEALS  
CA G.R. CV No. 103119  
1000 Manila

DE CASTRO & CAGAMPANG DE CASTRO  
LAW FIRM  
Counsel for Respondent Angcotex Trading Corp.  
7th LTA Building,  
118 Perea St. Legaspi Village,  
1229 Makati City

Uni-Dravo Commercial Corporation  
Respondent  
No.173 A. Mabini St.,  
1400 Caloocan City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 129, Caloocan City, Metro Manila

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