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SECOND DIVISION

[G.R. No. 216120. March 29, 2017]

PHILIPPINE TRUST COMPANY (also known as PHILTRUST BANK), *petitioner, vs.* **REDENTOR R. GABINETE, SHANGRILA REALTY CORPORATION and ELISA T. TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHOULD BE RAISED IN PETITIONS FILED UNDER RULE 45; EXCEPTIONS.— The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. x x x However, these rules do admit exceptions. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. ID.; EVIDENCE; FORGERY; MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE.—

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In *Mendoza v. Fermin*, this Court emphasized that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny, x x x As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, the respondent was not able to prove the fact that his signature was forged.

3. ID.; ID.; ID.; FOR NOTARIZED DOCUMENTS, HANDWRITING EXPERT'S OPINION FAILS AS AGAINST CATEGORICAL DECLARATION OF NOTARIES PUBLIC.— It is also worthy to note that the document being contested has been notarized and thus, is considered a public document. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant. As also borne in the records, the notary public who notarized the Continuing Suretyship Agreement testified in court and confirmed that respondent signed the said document in her presence, x x x In *Libres, et al. v. Spouses Delos Santos, et al.* this Court ruled that a handwriting expert's opinion may not overturn the categorical declaration of the notaries public that the signatories signed a questioned document in their presence.

APPEARANCES OF COUNSEL

Jane D. Laplana-Suarez for petitioner.
Fortun and Santos Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated February 17, 2015 of petitioner Philippine Trust Company (*a.k.a. Philtrust Bank*)

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that seeks to reverse and set aside the Decision[1] dated March 25, 2014 of the Court of Appeals (*CA*) in CA-G.R. CV No. 96009, which reversed the Decision[2] dated April 20, 2010 of the Regional Trial Court, Branch 33, Manila in a case for collection of sum of money filed by petitioner against respondents.

The facts follow.

Petitioner Philtrust, a domestic commercial banking corporation duly organized and existing under Philippine laws, filed a complaint on March 8, 2006 against Shangrila Realty Corporation, a domestic corporation duly organized under Philippine laws, together with Elisa Tan and respondent Redentor Gabinete alleging that petitioner granted Shangrila's application for a renewal of its bills discounting line in the amount of Twenty Million Pesos (₱20,000,000.00) as shown by a letter-advice dated May 28, 1997 bearing the conformity of Shangrila's duly-authorized representatives, Tan and respondent Gabinete. The said loan was conditioned on the execution of a Continuing Suretyship Agreement dated August 20, 1997, with Shangrila as borrower and respondent Gabinete and Tan as sureties, primarily to guaranty, jointly and severally, the payment of the loan. The following are the terms of the loan:

> a. The amount of Seven Million Two Hundred Thousand Pesos (₱7,200,000.00) evidenced by Promissory Note (PN) No. 7626 dated 20 August 1997 with maturity dated on 30 May 1998 and secured by a Real Estate Mortgage (*REM*) dated 6 July 1995 executed by Defendant Shangrila through its Excutive Vice-President and duly authorized representative, Defendant Tan, constituted over the properties covered by Transfer Certificate of Title (TCT) Nos. 220865-ind. And 220866-ind, of the Regisrty of Deeds for the City of Manila, both registered in the name of Defendant Shangrila. x x x

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, with the concurrence of Associate Justices Isaias P. Dicdican and Michael P. Elbinias; *rollo*, pp. 54-75.

[2] Penned by Presiding Judge Reynaldo G. Ros; *id.* at 129-139.

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b. A clean loan in the amount of Six Million Five Hundred Forty Thousand Pesos (₱6,540,000.00) evidenced by PN No. 7627 dated 20 August 1997 with maturity date on 30 May 1998, xxx Annex "F" x x x;

c. A clean loan in the amount of One Million Two Hundred Thousand Pesos (₱1,200,000.00) as evidenced by PN No. 7628 dated 20 August 1997 with maturity date on 30 May 1998, xxx Annex "G" xxx; and

d. A clean loan in the amount of Five Million Pessos (₱5,000,000.00) evidenced by PN No. 7581 dated 09 July 1997 with maturity date on 03 September 1997, xxx Annex "H" x x x;[3]

The following are the interest rates for the corresponding promissory notes:

a. PN No. 7626 – 23% per annum;
b. PN No. 7627 – 25% per annum;
c. PN No. 7628 – 25% per annum;
d. PN No. 7681 – 21% per annum.[4]

It is provided in the Continuing Suretyship Agreement that the sureties shall jointly and severally guarantee with the borrower the punctual payment at maturity of any and all instruments, loans, advances, credits and/or other obligations, and any and all indebtedness of every kind, due, or owing to Philtrust, and such interest as may accrue and such expenses as may be incurred by Philtrust.

Upon the maturity of the loan, Shangrila failed to pay Philtrust, rendering the entire principal loan, together with accrued interest and other charges, due and demandable. Philtrust repeatedly demanded for payment, but none of the respondents heeded the said demands.

Thus, Philtrust filed a Petition for Extrajudicial Foreclosure of the real estate mortgage wherein Philtrust was the highest bidder at the public auction with a bid of Six Million Pesos

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[3] *Rollo*, p. 56.

[4] *Id*.

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(₱6,000,000.00). The breakdown of Shangrila's total obligation of ₱61,357,447.49, as of the date of the auction, is as follows:

a. PN No. 7626	-	₱22,015,535.90
b. PN No. 7627	-	20,159,092.93
c. PN No. 7628	-	3,741,835.86
d. PN No. 7581	-	15,440,982.80
		₱61,357,447.49[5]

Due to the insufficiency of the proceeds of the foreclosure sale to fully satisfy the obligation of Shangrila, the ₱6,000,000.00 proceeds of the foreclosure sale was applied to PN No. 7626 leaving a deficiency of ₱16,015,535.90 as of December 16, 2002, and despite repeated demands, respondents failed to fully settle the deficiency under PN No. 7626 and the clean loans under PN No. 7627, PN No. 7628 and PN No. 7581. As of February 28, 2006, respondent's total outstanding obligation to Philtrust is ₱50,425,059.20, inclusive of interest. Therefore, Philtrust filed the instant case and engaged the services of a counsel incurring the equivalent of 10% of the total amount due as attorney's fees per stipulation in the promissory notes.

Thereafter, on May 29, 2007, Philtrust filed a Motion to Declare Shangrila, Tan and respondent Gabinete in default on the ground that they failed to file an Answer despite service of summons by publication and, on June 26, 2007, the RTC declared them in default and allowed Philtrust to present its evidence *ex parte*.

The RTC, on January 4, 2008, dismissed the complaint without prejudice due to the failure of Philtrust to present its evidence *ex parte*. Thus, Philtrust filed a motion for reconsideration which was granted in an Order dated February 29, 2008.

To testify on the averments in the complaint, Philtrust presented Rosario Cruz Sy and Atty. Jane Laplana Suarez; and as of March 26, 2008, the total loan obligation of defendants amounted to ₱64,153,827.02. On April 10, 2008, Philtrust made a formal offer of its evidence.

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[5] *Id*. at 57.

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In the meantime, respondent Gabinete, on April 18, 2005, filed a Motion to Lift Order of Default which was granted in an Order dated June 19, 2008. The same respondent was also allowed to cross-examine the witnesses of Philtrust. In his Answer, respondent Gabinete alleged that he ceased to be connected with Shangrila as of 1995 and as far as he knows, Shangrila never started doing business after it was incorporated in March 1994. He also specifically denied under oath the genuineness and due execution of the confirmation letter dated May 28, 1997. According to him, his signature of conformity is a forgery and he has nothing to do with the loans. He further added that the mortgagor in the real estate mortgage dated July 6, 1995, which secured PN No. 7626 dated August 20, 1997 was Tan and the properties mortgaged do not belong to Shangrila. He also averred that PN No. 7581 dated July 9, 1997 appears to be secured by a third party post-dated check and the silence and omission of Philtrust with regard to the identity of the third party evidences bad faith and disregard for the truth. He also asserted that the loan transactions or promissory notes are void because Tan did not have the authority to incur the loan for Shangrila or execute the loan documents. Gabinete claimed that when he received a demand for payment from Philtrust, he immediately replied and denied any participation in the transaction and informed Philtrust that his signature in the Continuing Surety Agreement had been forged, expressing his willingness and readiness to cooperate with any investigation and he did not receive further notices of demand from Philtrust and has no knowledge of the demands made on his co-respondents. Finally, he argued that his refusal to pay as demanded is justified because he had no participation in the loan transactions.

After the cross-examination and re-direct examination of Philtrust's witness and after respondent Gabinete testified, the latter, on March 3, 2009, filed a motion praying that the court direct the National Bureau of Investigation (*NBI*) to conduct an analysis of respondent Gabinete's signature appearing in the Continuing Suretyship Agreement which the RTC granted in its Order dated March 11, 2009.

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A senior document examiner of the NBI, Efren Flores, testified that he evaluated and made a comparative examination of the submitted specimen and the document containing the questioned signature to determine whether they were written by one and the same person and after a thorough examination, it was found that the questioned signatures and the standard sample signatures were not written by one and the same person.

After respondent Gabinete filed his formal offer of evidence on September 28, 2009, the RTC rendered its Decision on April 20, 2010 in favor of the petitioner with the following dispositive portion:

> WHEREFORE, premises considered, defendants Shangrila Realty Corporation, Elisa Tan and Redentor Gabinete are jointly and severally ordered to pay the following amounts, to wit:
>
> 1. Sixty-Four Million One Hundred Fifty-Three Thousand Eight Hundred Twenty-Seven and 02/100 Pesos (₱64,153,827.02), representing the total deficiency obligation of the defendants under promissory note 7626 and their total outstanding obligations under the promissory notes 7627, 7628 and 7581 computes as of March 26, 2008, plus penalties and interests until fully paid;
>
> 2. Attorney's fees of 10% of the total amount due;
>
> 3. Costs of suit.
>
> SO ORDERED.[6]

Aggrieved, respondent Gabinete elevated the case to the CA. The CA found merit in the appeal and ruled in favor of respondent Gabinete. The dispositive portion of the CA's Decision dated March 25, 2014, reads as follows:

> **WHEREFORE**, premises considered, the Appeal is **GRANTED**. The Decision dated April 20, 2010 issued by the Regional Trial Court, Branch 33, Manila, in Civil Case No. 06-114599 is **AFFIRMED** with **MODIFICATION** that defendant-appellant Redentor Gabinete is held not liable to Philtrust Banking Company (also known as Philtrust

[6] *Id*. at 139.

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Bank) for the loan transactions entered into by defendant Shangrila Realty Corporation, or jointly and severally liable to Philtrust Bank with Elisa Tan under the Continuing Surety Agreement.

SO ORDERED.[7]

According to the CA, the RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by respondent Gabinete to the NBI comprised only of his full signature and not his shortened signature. It further ruled that despite respondent Gabinete's failure to submit a sample of his shortened signature to the NBI, the RTC was not precluded from making a comparison of his questioned signature in the Continuing Suretyship Agreement to his shortened signature in the Articles of Incorporation and the By-laws of Shangrila. Hence, the CA concluded that there was no dearth of evidence to make an intelligent comparison of respondent Gabinete's shortened signature.

Hence, the present petition with the following grounds:

i.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN GIVING CREDENCE TO THE FINDING OF THE NBI DOCUMENT EXAMINER, WHEN IT WAS ESTABLISHED THAT THE NBI DOCUMENT EXAMINER DID NOT COMPLY WITH THE REQUIREMENTS IN SIGNATURE ANALYSIS.

ii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FINDING THAT THE SIGNATURE OF RESPONDENT GABINETE ON THE CONTINUING SURETYSHIP AGREEMENT IS FORGED.

iii.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN DISREGARDING THE PRESUMPTION OF

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[7] *Id*. at 74. (Emphasis in the original)

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REGULARITY ACCORDED TO THE CONTINUING SURETYSHIP AGREEMENT, AS A DULY NOTARIZED DOCUMENT.

iv.

THE APPELLATE COURT COMMITTED GRAVE AND SERIOUS ERROR IN FAILING TO TAKE INTO ACCOUNT THAT RESPONDENT GABINETE AGREED TO BE SOLIDARILY LIABLE WITH SHANGRILA AND MS. TAN WHEN HE SIGNED THE LETTER-ADVICE DATED MAY 28, 1997 (EXHIBIT "A" FOR THE PETITIONER).[8]

Petitioner argues that unlike the assessment and analysis made by the RTC on the testimony and findings of the NBI document examiner, the CA failed to recognize that the examination made by the NBI document examiner on the questioned signature of respondent Gabinete was tainted with serious flaws and irregularities that cast serious doubts on the veracity and accuracy of the signature examination and the result thereof. Petitioner also points out that the CA failed to consider the presumption of regularity accorded to the Continuing Suretyship Agreement as a duly notarized document. It further contends that the CA should have given credence on the testimony of the notary public who categorically stated that respondent Gabinete signed the Continuing Suretyship Agreement in her presence.

This Court, on April 6, 2015,[9] denied petitioner's petition for failure to sufficiently show that the CA committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction. However, this Court, on August 26, 2015,[10] granted petitioner's motion for reconsideration and reinstated the present petition.

In its Comment/Opposition[11] dated June 24, 2015, respondent Gabinete asserts that the conflicting findings of the trial court

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[8] *Id*. at 22.

[9] *Id*. at 182.

[10] *Id*. at 245-246.

[11] *Id*. at 229-244.

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and the appellate court does not result to an automatic re-examination and re-evaluation of the evidence in the case. He also insists that the CA did not commit grave and serious error in giving credence to the findings of the NBI document examiner which ruled that the signature of respondent Gabinete in the Continuing Suretyship Agreement was forged. He further asserts that the presumption of regularity of a notarized document is a mere presumption that may be rebutted by evidence.

The petition is meritorious.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[12] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[13] when supported by substantial evidence.[14] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[15]

This Court's Decision in *Cheesman v. Intermediate Appellate Court*[16] distinguished questions of law from questions of fact:

> As distinguished from a question of law – which exists "when the doubt or difference arises as to what the law is on a certain state of facts" – "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific

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[12] Sec. 1, Rule 45, Rules of Court.

[13] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.,* 364 Phil. 541, 546 (1999) [Per *J*. Pardo, First Division].

[14] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J*. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J*. Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J*. Paras, Second Division].

[15] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J*. Ynares-Santiago, Special First Division].

[16] 271 Phil. 89 (1991) [Per *J*. Narvasa, Second Division].

surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[17]

Seeking recourse from this court through a petition for review on *certiorari* under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[18]

However, these rules do admit exceptions.[19] Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[20]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[21]

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[17] *Cheesman v. IAC, supra,* at 97-98.

[18] *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per *J.* Velasco, Third Division].

[19] *Remedios Pascual v. Benito Burgos, et al.*, G.R. No. 171722, January 11, 2016.

[20] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[21] *Medina v. Mayor Asistio, Jr., supra*, at 232.

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With contrasting findings of the RTC and the CA, this Court deems it proper to determine whether or not fraud was indeed proven in the present case.

In finding that the signature of the respondent was fraudulently acquired, the CA reversed the findings of the RTC with the following reasons:

x x x x x x x x x

The RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by Gabinete to the NBI comprised only of his full signature and not of his shortened signature. But, even if the RTC failed to give due weight to the findings of the NBI Document Examiner, the judge should have conducted his own independent examination of the questioned signatures in order to arrive at a reasonable conclusion as to its authenticity.

Despite Gabinete's failure to submit a sample of his shortened signature to the NBI, the RTC was not precluded from making a comparison of his questioned signature in the Continuing Suretyship Agreement to his shortened signature in the Articles of Incorporation, and in the By-laws of Shangrila. There was no dearth of evidence to make an intelligent comparison of Gabinete's shortened signature.

A "naked eye" examination of the questioned signature and the shortened signatures in the Article of Incorporation and By-laws of Shangrila shows two (2) significant differences, that: the "R" and the "G" in the questioned signature are not connected, while the "R" and "G" in the sample documents are connected; and (2) the RGabinete in Gabinete's standard signature are written continuously, while in the questioned signature, "Gabi" and "nete" are perceptive separate. These and the NBI document examiner's findings apply with equal force to the confirmation letter dated May 28, 1997.

The confluence of the following circumstances prove that Gabinete's signature in the Continuing Suretyship Agreement was forged, thus:

> First. Gabinete avers that: at the time the Continuing Suretyship Agreement was signed, he was no longer connected with Shangrila or with the accounting firm, Punongbayan and Araullo; the partnership apparently assigned him as paper incorporator and board director in order to secure SEC approval

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of Shangrila's incorporation, only; and, at the time he was already working abroad with another employer, Ernst and Young. Although the RTC found that at the time of the signing of the Continuing Suretyship Agreement, Gabinete was in the Philippines, it would have been absurd for a person, who no longer had ties to Shangrila, to sign as a surety of its loan obligations.

Second. There was no Board Resolution or Corporate Secretary's Certificate designating Tan and/or Gabinete as authorized signatory for the loans, or renewal of loans, secured for and on behalf of Shangrila.

Third. Aside from the first promissory note, there were no collaterals securing the payment of the loans in violation of the accepted banking rules and practices.

Fourth. Although PN No. 7581 was secured by a Third party Post-dated Check, Philtrust failed to cash such post-dated check and deduct its proceeds from the existing obligation of Philtrust; Philtrust also failed to divulge the maker of such postdated check.

x x x x x x x x x.[22]

The CA cites the failure of the RTC to give due weight to the findings of the NBI Document Examiner and the failure of the judge to conduct his own independent examination of the questioned signatures in arriving at an erroneous conclusion. However, it is the CA that gravely committed an inaccurate appreciation of the facts and evidence presented in court.

In *Mendoza v. Fermin*,[23] this Court emphasized that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny, thus:

While we recognize that the technical nature of the procedure in examining forged documents calls for handwriting experts, resort to

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[22] *Rollo,* pp. 70-73.

[23] 738 Phil. 429, 441 (2014).

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these experts is not mandatory or indispensable, because a finding of forgery does not depend entirely on their testimonies. Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely on the testimonies of handwriting experts. The doctrine in *Heirs of Severa P. Gregorio v. Court of Appeals*, is instructive, to wit:

> Due to the technicality of the procedure involved in the examination of forged documents, the expertise of questioned document examiners is usually helpful. However, resort to questioned document examiners is not mandatory and while probably useful, they are not indispensable in examining or comparing handwriting. ***A finding of forgery does not depend entirely on the testimony of handwriting experts. Although such testimony may be useful, the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny.*** The judge cannot rely on the mere testimony of the handwriting expert. In the case of *Gamido vs. Court of Appeals* (citing the case of Alcon vs. Intermediate Appellate Court, 162 SCRA 833), the Court held that the authenticity of signatures
>
> > ... is not a highly technical issue in the same sense that questions concerning, *e.g*., quantum physics or topology or molecular biology, would constitute matters of a highly technical nature. The opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling upon a judge than an opinion rendered by a specialist on a highly technical issue.
>
> A judge must therefore conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity and this cannot be done without the original copy being produced in court.

When the dissimilarity between the genuine and false specimens of writing is visible to the naked eye and would not 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.[24]

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[24] *Mendoza v. Fermin, supra*, at 441-442. (Emphasis in the original; citations omitted)

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In this case, the RTC judge was able to exercise his independent judgment in determining the authenticity or genuineness of the signature in question, and not rely merely on the testimony of the NBI Document Examiner. Needless to say, the RTC's Decision is more in depth in its analysis of the absence of forgery than that of the CA's finding that forgery is present, thus:

x x x x x x x x x

Defendant, for his part, presented Mr. Efren Flores to prove that his signature appearing in the Suretyship Agreement was forged. However, after his testimony went under a gruelling cross-examination, this Court believes that it cannot give evidentiary weight to the findings of the document examiner.

As a matter of fact, even defendant himself admitted having used two sets of signatures in his transactions. One shortened signature of "RGabinete" and one full signature of "RedentorGabinete." To prove this point, defendant's signatures appearing on the Articles of Incorporation of Shangrila Realty showed that he used his shortened signature in incorporating the same.

But defendant insisted that his shortened signature appearing on the Suretyship Agreement was not his own. Mr. Efren Flores even made a conclusion to this effect:

> The questioned signatures of R. Gabinete, on one hand, and the standard/sample signatures of Redentor R. Gabinete, on the other hand, WERE NOT written by one and the same person. (Questioned Documents Report No. 246-509 (165-409) dated June 11, 2009)

However, a careful examination of the testimony of Efren Flores will show that the standard (sample) signatures appearing on the documents submitted to the NBI for examination do not contain the shortened signature of the defendant appearing on the Continuing Surety Agreement. The documents submitted to the NBI-Questioned Documents Division are as follows: a) Individual Income Tax Return, stamp dated March 17, 1994; b) Letter consisting of four (4) pages, dated August 17, 1994; c) Individual Income Tax Return, stamp dated March 3, 1995; d) Disclosure Statement of Loan/Credit Transaction, dated December 20, 1995; e) Deed of Sale of Motor Vehicle, dated 1996; f) Individual Income Tax Return, dated 1998; g) Plan application, dated November 16, 1998; h) Annual Income Tax Return, April 6,

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2000; and i) SSS Salary Loan Official Receipt, stamp dated June 15, 2001. Not a single document reflected the shortened signature (as appearing on the Sureytyship Agreement) of herein defendant to enable the NBI Document Examiner to make a conclusive analysis of the signatures subject matter of the case.

Thus, Philtrust is correct in claiming that the standard (sample) signatures that were submitted to the NBI Questioned Documents Division could not be considered as sufficient standards for comparison with the signature of defendant appearing on the Continuing Suretyship Agreement. Moreso, even the specimen (sample) signatures show exhibit variations as admitted to by Mr. Flores. His testimony during cross is as follows:

> Atty. Salvador: Among the specimen signatures affixed on the submitted documents, Sir, are there differences among those signatures, the specimen signatures that were submitted to you?
>
> A: The specimen signatures show exhibit variations, Ma'am.
>
> Q: So, they also exhibit variations, Sir?
> A: Yes, ma'am.

The tests conducted by the NBI ran counter with the requirements as regards the qualification of specimen signatures for comparison purposes. This is even made apparent in the following testimony of Efren Flores, to wit:

> Q: Alright. In your own report you mentioned that there were ten (10) specimens which were submitted to you, what conclusion, if any, were you able to make with regard to the number of the individuals who executed the same. Were they made by just one person or by different persons?
>
> A: Before utilizing the submitted standard for comparison, it is being evaluated and collated whether they were written by one and the same person and we also consider the date of execution of all the documents submitted whether they were written before, during and after the date of the questioned document.
>
> Q: What is the requirement by your office with regard to the qualification of specimen signatures for purposes of comparison?
>
> A: For purposes of comparison, the specimen signature should be written in the same style [as] that of the questioned, they

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should also be executed contemporaneously with the date of the questioned signature and they must be sufficient in number.

Contrary to the requirements of NBI, it is apparent that the specimen signatures ("RedentorGabinete") were not written in the same style as that of the questioned signature ("RGabinete") appearing on the Suretyship Agreement. They were also not executed contemporaneously with the date of the questioned signature. It may be recalled that no document was submitted by the defendant to the NBI bearing the year 1997, the same time when the Continuing Suretyship Agreement was executed.

Even Efren Flores acknowledged the important influence of passage of time to the handwriting of a person, thus –

Atty. Salvador: Sir, will you agree with me that the signature of a person vary in time?
A: Yes, ma'am.

Q: So, you will agree with me sir that the stroke of a particular letter of a handwriting of a person today will vary next year, will be different from the stroke of the same letter that you will write next year?
A: Yes, Ma'am. It will vary.

But still, defendant did not submit any document showing his signature as of 1997 to enable the NBI to analyze and compare the same with his signature appearing in the Suretyship Agreement.

Furthermore, this Court believes that the fact of forgery cannot be presumed simply because there are dissimilarities between the standard and the questioned signature. x x x.

x x x x x x x x x

[I]t cannot be concluded that the signature of defendant Redentor Gabinete appearing on the Continuing Suretyship Agreement is not genuine for lack of proper identification and a more accurate comparison with the standard (sample) signatures as presented in the NBI. At most, the findings of the NBI are not conclusive. What is more, even the document examiner failed to categorically state that there is an evidence of forgery in this case. Thus –

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Atty. Salvador: Am I correct sir that in your report you did not categorically stated (sic) that there was a finding of forgery in this case?
A: No, Ma'am.[25]

The above findings clearly disprove the CA's blatant declaration that the RTC judge failed to conduct an independent examination on the questioned signature.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery.[26] One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[27] In this case, the respondent was not able to prove the fact that his signature was forged.

It is also worthy to note that the document being contested has been notarized and thus, is considered a public document. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant.[28] As also borne in the records, the notary public who notarized the Continuing Suretyship Agreement testified in court and confirmed that respondent signed the said document in her presence, thus:

ATTY. SALVADOR:

Q And what is your proof that there was compliance of this Terms and Conditions?
A There was a Continuing Suretyship Agreement signed by Mrs. Elisa Tan and Mr. Redentor Gabinete in favor of the bank.

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[25] *Rollo*, pp. 134-139. (Citations omitted)

[26] *Heirs of the Late Felix M. Bucton v. Go*, G.R. No. 188395, November 20, 2013, 710 SCRA 457, 465.

[27] *Spouses Alfaro v. Court of Appeals*, 548 Phil. 202, 216 (2007).

[28] *Domingo v. Domingo, et al.,* 495 Phil. 213, 222 (2005).

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Q If shown to you the said Continuing Suretyship Agreement Madam Witness, will you be able to identify the same?
A Yes, Ma'am.

Q Showing you here Madam Witness a document entitled Continuing Suretyship Agreement dated August 20, 1997, can you please tell us the relation of this continuing suretyship agreement with the continuing suretyship agreement which you said were executed by the defendants?
A This is the Continuing Suretyship Agreement I referred to which was executed by Mr. Redentor Gabinete and Mrs. Elisa Tan to act as sureties for the loan of Shangrila Realty Corporation.

ATTY. SALVADOR:
Q Madam Witness, at the dorsal portion of this Continuing Suretyship Agreement appears several signatures beginning with the signature above the word Surety Elisa T. Tan, can you identify whose signature is this?
WITNESS:
A This is the signature of Elisa Tan a surety for Shangrila Realty Corporation.

Q And why do you know that this is the signature of Elisa T. Tan?
A It was signed in my presense.

Q Madam Witness, below the signature of Elisa T. Tan appears another signature above the typewritten name Redentor R. Gabinete, Surety, can you identify the signature Madam Witness?
A That is the signature of Mr. Redentor R. Gabinete, Ma'am.

Q And why do you know that this is the signature of Redentor R. Gabinete?
A It was also signed in my presence.[29]

In *Libres, et al. v. Spouses Delos Santos*, *et al.*[30] this Court ruled that a handwriting expert's opinion may not overturn

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[29] TSN, March 26, 2008, pp. 13-16, *rollo*, pp. 45-46. (Emphasis ours)

[30] 577 Phil. 509, 521-522 (2008).

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the categorical declaration of the notaries public that the signatories signed a questioned document in their presence, thus:

Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence. A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law. Without that sort of evidence, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand.

Against the bare denials and interested disavowals of the petitioners, the testimonies of the two notaries public must prevail. Their identical and categorical declarations that Libres signed the mortgage deeds in their presence present a more convincing picture of the actual events that transpired.

We agree with the appellate court's ruling that petitioners' failure to present the two witnesses to the mortgage deeds, Pancho and Gloria Libres, is fatal to their cause. Their testimonies, if favorable to petitioners' cause, would have dissipated, by way of corroboration, the courts' justifiable supposition that petitioners' testimonies are merely self-serving. He who disavows the authenticity of his signature on a public document bears the responsibility to present evidence to that effect. Mere disclaimer is not sufficient. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness. This is because as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.

Petitioners, left with no other recourse than their self-serving declarations for lack of corroborating evidence, seek redemption through the lone testimony of the NBI handwriting expert, who understandably is the sole disinterested witness for the petitioners.

This, however, cannot suffice. Standing alone amidst the mass of evidence adduced by the respondents and their witnesses, **the NBI handwriting expert's opinion may not overturn the categorical declaration of the notaries public that Libres signed the mortgage deeds in their presence**. As we held in *Leyva v. Court of Appeals*, **the positive testimony of the attesting witnesses ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. Besides, the handwriting expert's testimony is only persuasive, not conclusive**.[31]

In conclusion, it must always be remembered that forgery is not presumed but must be proved by clear, positive and convincing evidence by the party alleging it.[32]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated February 17, 2015 of petitioner Philippine Trust Company is **GRANTED**. Consequently, the Decision dated March 25, 2014 of the Court of Appeals in CA-G.R. CV No. 96009 is **REVERSED** and **SET ASIDE** and the Decision dated April 20, 2010 of the Regional Trial Court, Branch 33, Manila is **AFFIRMED and REINSTATED.**

SO ORDERED.

Carpio (*Chairperson*), *Leonen,* and *Martires, JJ.,* concur.

Mendoza, J., on wellness leave.

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[31] *Libres, et al. v. Spouses Delos Santos, et al., supra*, at 520-522. (Citations omitted; emphasis ours)

[32] *Vda. de Mendez v. CA, et al.,* 687 Phil. 185, 194-195 (2012), citing *Bautista v. Court of Appeals,* 479 Phil. 787, 793 (2004).