

**EQUITABLE BANKING CORPORATION, PLAINTIFF-APPELLEE, VS.
FELIPE LIWANAG AND MICHAEL PARSONS, DEFENDANTS, FELIPE
LIWANAG, DEFENDANT-APPELLANT.**

G.R. No. L-28335. March 30, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal, on questions purely of law, taken by defendant Felipe Liwanag, from a decision of the Court of First Instance of Manila sentencing him to pay the plaintiff, Equitable Banking Corporation, "the sum of P27,346.66 with accrued interest thereon in the sum of P321.74 as of April 11, 1967 plus interest on said sum of P27,346.66 at 14% per annum from April 12, 1967 or P10.6348 daily until the obligation is fully paid, together with 10% of the whole amount due as attorney's fees and the costs of the suit."

In the complaint filed, on April 26, 1967, against appellant Felipe Liwanag and one Michael Parsons, it is alleged that, on November 4, 1963, said defendants obtained a loan of P80,000.00, evidenced by a promissory note executed by them, stipulating that they would pay, jointly and severally, said amount, with interest thereon, at the rate of 9% per annum, within 120 days; that, in case of non-payment at maturity, they would similarly pay an additional interest of 5% per annum, on the total amount due until paid, which shall be compounded monthly, and together with the principal shall bear interest at the rate of 12% per annum, until fully paid; that, in case the matter is referred to an attorney for collection, the defendants would pay the equivalent of 10% of the amount due, for attorney's fees, in addition to the costs; and that the defendants had failed and refused to pay the outstanding balance of said obligation in the sum of P27,346.66, for which judgment was prayed, with interest, attorney's fees and costs.

Upon service of summons, appellant Liwanag filed an answer admitting that he and his co-defendant had obtained said loan of P80,000.00 and denying the rest of the averments in the complaint "for lack of knowledge sufficient to form a belief as to the truth thereof." By way of special defenses, appellant further alleged that plaintiff "has no cause of action" and that its "claim for interest and attorney's fees is exorbitant." Appellant further incorporated in his answer a cross-claim against his co-defendant Michael Parsons who, appellant alleged, "is liable for reimbursement or contribution of the amounts paid and which shall be paid" by him "by reason of plaintiff's claim."

Alleging that appellant's answer failed to tender any issue, plaintiff moved, on July 5, 1967, for judgment on the pleadings. Although his counsel was serve copy of this motion, appellant did not object thereto. On July 8, 1967, the lower court rendered the judgment prayed for. Hence, this appeal in which appellant has limited himself to assailing the propriety of said judgment, upon the ground "that specific denials and affirmative defenses" had allegedly been interposed in his answer.

This pretense is manifestly devoid of merit. Although the Rules of Court permit a litigant to file an answer alleging lack of knowledge to form a belief as to the truth of certain allegations in the complaint, this form of

denial "must be availed of with sincerity and in good faith, - certainly neither for the purpose of confusing the adverse party as to what allegations of the complaint are really put in issue nor for the purpose of delay." [1] Indeed, it has been held that said mode of denial is unavailing "where the fact as to which want of knowledge is asserted is to the knowledge of the court as plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue." [2] Thus, under conditions almost identical to those obtaining in the case at bar, this Court, speaking through Mr. Justice Villamor, upheld a judgment on the pleadings in *Capitol Motors vs. Nemesio I. Yabut*, [3] from which we quote:

"We agree with defendant-appellant that one of the modes of specific denial contemplated in Section 10, Rule 8, is a denial by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint. The question, however, is whether paragraph 2 of defendant-appellant's answer constitutes a specific denial under the said rule. We do not think so. In *Warner Barnes & Co., Ltd. vs. Reyes, et al.*, G. R. No. L-9531, May 14, 1958 (103 Phil., 662), this Court said that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In said case the suit was one for foreclosure of mortgage, and a copy of the deed of mortgage was attached to the complaint; thus, according to this Court, it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage. The same thing can be said in the present case, where a copy of the promissory note sued upon was attached to the complaint. The doctrine in *Warner Barnes & Co., Ltd.* was reiterated in *J. P. Juan & Sons, Inc. vs. Lianga Industries, Inc.*, G. R. No. L-25137, July 28, 1969 (28 SCRA 807). And in *Sy-quia vs. Marsman*, G. R. No. L-23426, March 1, 1968 (22 SCRA 927), this Court said:

'With regard to the plea of lack of knowledge or information set up in paragraph 3 of the answer, this Court's decision in *Warner Barnes vs. Reyes*, 103 Phil. 662, 665, is authority for the proposition that this form of denial must be availed of with sincerity and good faith, not for the purpose of confusing the other party, nor for purposes of delay. Yet, so lacking in sincerity and good faith is this part of the answer that defendants-appellants go to the limit of denying knowledge or information as to whether they (defendants) were in the premises (Marsman Bldg.) on January 4, 1961, as averred in paragraph 4 of the complaint. Yet whether such a fact was or was not true could not be unknown to these defendants.'"

In the case at bar, plaintiff's case is even stronger, for, in addition to annexing to the complaint a copy of the promissory note executed by appellant and his co-defendant, Michael Parsons, plaintiff attached to said copy a statement of their account, with specification of the partial payments made on account of the defendants' obligation and the dates of said partial payments, apart from the sum due from them at the end of each month, beginning from March 16, 1964. Moreover, appellant has, not only failed to deny specifically, under oath, the authenticity and due execution of said note, but, also, admitted expressly having contracted the obligation therein set forth. Obviously, he should know whether the partial payments abovementioned or any payment at all, had been made. Hence, he cannot avail of the provision allowing a denial "for lack of knowledge sufficient to form a belief".

Neither did his special or affirmative defenses tender any real issue. Aside from the bare affirmation that plaintiff has "no cause of action" and that "plaintiff's claim for interest and attorney's fees is exorbitant", there is nothing in appellant's answer to give any semblance of seriousness to or merit in these defenses. In fact, his own brief has not even tried to prove the contrary. We have not overlooked the 14% interest that appellant has been sentenced to pay. This may appear to be usurious, but it is not so. The rate stipulated was 9%, subject, however, to an additional rate of 5%, in the event of default. The stipulation about payment of such additional rate partakes of the nature of a penalty clause, which is sanctioned by law, [4] although "the penalty may also be reduced by the courts

if it is iniquitous or unconscionable."[5] Appellant has not even attempted to show that it is so.

It is, accordingly, obvious that this appeal has been interposed for the sole purpose of delay, in view of which the decision appealed from should be, as it is hereby affirmed, with treble costs, to be paid, jointly and severally, by appellant Felipe Liwanag and his counsel of record.[6]

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., no part.

[1] Warner Barnes & Co., Ltd. v. Reyes, 103 Phil. 662, 665; National Marketing Corporation v. De Castro, 106 Phil. 803; Sy-quia v. Marsman, L-23426, March 1, 1968; J.P. Juan & Sons, Inc., v. Lianga Industries, Inc., L-25137, July 28, 1969.

[2] Ice Plant Equipment Co. v. Martocello, D. C. Pa. 1941, 43 F. Supp. 281, cited in Warner Barnes & Co., Ltd. vs. Reyes, supra.

[3] G.R. No. L-28140, March 19, 1970.

[4] Art. 1226, Civil Code of the Philippines.

[5] Art. 1229, Civil Code of the Philippines.

[6] J.P. Juan & Sons, Inc. v. Lianga Industries, Inc., supra, p. 813; Lanza v. Guerrero, Sr., L-21581, Aug. 28, 1969; Balmes v. Suson, L-27235, May 22, 1969; Uypuanco v. Equitable Banking Corporation, L-26679, April 30, 1969; Cobb-Perez v. Lantin, L 22320, July 29, 1968.

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