

**PHILIPPINE COMMERCIAL & INDUSTRIAL BANK,
PLAINTIFF-APPELLEE, VS. ELRO DEVELOPMENT CORPORATION
AND MERIDIAN ASSURANCE CORPORATION, DEFENDANTS, ELRO
DEVELOPMENT CORPORATION, DEFEN...**

G.R. No. L-30830. August 22, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal was taken to the Court of Appeals by the defendant Elro Development Corporation from the adverse decision of the Court of First Instance of Manila in its Civil Case No. 6612, and subsequently certified to us by the appellate court, there being no questions of fact involved.

The suit originated in the City Court of Manila, for the collection of P4,973.54, with interest thereon at 9% per annum, the said sum being the unpaid balance of a promissory note for P20,000 signed by the said defendant in favor of the plaintiff. The City Court gave judgment for the latter and the defendant appealed to the Court of First Instance. The complaint, as reproduced on appeal, incorporated by reference the promissory note sued upon, and alleged the amount of partial payments made as well as the amount of the balance sought to be recovered. In the answer of the defendant the due execution of the promissory note was not denied under oath. What the defendant did deny was that it had made partial payments at all or that there was still a balance of P4,973.54, "the truth of this matter being that no such amount is due the plaintiff." In fact, according to the trial court, the execution of the said note was admitted, although counsel manifested that the receipts evidencing payment on the principal indebtedness were in the possession of the former lawyer.

When the case was called for trial on October 14, 1966 the plaintiff submitted its evidence, all documentary, consisting of a duplicate copy of the promissory note itself as well as a statement of the defendant's accounts and the written demand for payment upon him. The documents, duly marked as exhibits, were admitted by the Court, which there-upon gave the defendant five minutes to present its own evidence. The defendant failed to do so, and so the Court considered the case submitted. On October 28, 1966, decision was rendered sentencing it to pay the amount demanded, plus attorney's fees and costs.

On October 29, 1966 the defendant filed a motion for reconsideration and/or objection to the plaintiff's documentary exhibits, on the ground that they had not been properly identified, since nobody testified as to their execution. The motion was denied by the Court in its order of November 5, 1966; hence the present appeal.

The defendant cites Rule 132, Section 21, which says that "before any private writing may be received in evidence, its due execution and authenticity must be proved." Such proof, however, was correctly dispensed with in this case in view not only of the failure of the defendant to deny under oath the authenticity and due execution of the promissory note sued upon,[1] copy of which was annexed to and incorporated in the complaint, but also of the admission of those facts by the defendant's counsel at the pre-trial.

The next argument is that although the promissory note was not denied, there was a denial of the outstanding balance alleged in the complaint. The answer contains the following averment on this point: "Answering defendant specifically denies the allegations... to the effect that defendant made partial payments and that there is a balance of P4,973.54 on the alleged principal obligation of P20,000.00, the truth of the matter being that no such amount is due the plaintiff." It is difficult to divine the meaning of this denial. If no partial payments had been made and no amount was admitted as due the plaintiff, the thrust of the averment would seem to be that there was no initial obligation incurred at all; and yet the promissory note was not denied under oath and was in fact subsequently admitted at the pre-trial. On the other hand, if payments had been made, either partial or total, they should have been alleged with definiteness and evidence thereof duly presented. Neither was done by the defendant. The suggestion that it was not given its day in court is clearly without basis, for it was afforded such opportunity after the plaintiff had submitted its exhibits. Even in its motion for reconsideration, the defendant merely objected to the admission of the said exhibits, but referred to no evidence of its own which it could offer in defense. Indeed, as observed by the trial court, if the defendant had any receipts of payment in the possession of its former counsel they would have been presented before the City Court, where the case was tried and decided in the first instance.

The last point raised by the defendant is that its motion for reconsideration and/or objection to the plaintiff's documentary evidence should have been resolved before the decision was rendered. That, of course, was not possible, since the motion was filed one day after rendition of the decision; and in any case was correctly denied by the court.

The decision appealed from is affirmed, with double costs against the defendant-appellant.

Concepcion, C.J., Dizon, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Reyes, J.B.L., and Zaldivar, JJ., are on leave.

[1] "When an action or defense is founded upon a written instrument, copied or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts. x x x"

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