

CFMENDOZA FINANCE CORPORATION, PETITIONER, VS. SPOUSES MANOLO MARCIAL M. DIZON AND ELSIE GRACE R. DIZON, RESPONDENTS.

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GALAPATE-LAGUILLES, J:

This is an Petition for Review under Rule 42 of the Revised Rules of Court seeking the reversal of the Decision[1] dated February 28, 2011 of the Regional Trial Court, Branch 44, Dagupan City, dismissing the Complaint for “Sum of Money” docketed as Civil Case No. 16336-10, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered setting aside the assailed Decision of the Municipal Trial Court in Cities, Dagupan City in Civil Case No. 16336 dated August 26, 2010, and another one rendered dismissing the subject complaint for lack of cause of action.

SO ORDERED.[2]

On February 5, 2010, CFMendoza Finance Corporation (CFMFC) filed the instant Complaint for Sum of Money[3] before the MTCC of Dagupan City against the spouses Manolo Marcial M. Dizon and Elsie Grace R. Dizon (spouses Dizon). The Complaint alleged, among other things, that the spouses Dizon borrowed money in the amount of P30,000.00 from CFM Lending Investors (CFM Lending), the former name of CFMFC prior to its incorporation in 2003. As security of the loan, the spouses Dizon executed a Promissory Note[4] in favor of CFM Lending promising to pay jointly and severally the principal amount in six equal installment and interest at the rate of five percent (5%) per month and an additional penalty of six percent (6%) on the balance in case of non-payment of the obligation. It was further stipulated therein that an attorney's fees should be paid in case collection of the unpaid obligation should be referred to an attorney or when an action is filed in court. CFMFC further alleged that the spouses Dizon defaulted in their payment; and that despite demand[5] on November 12, 2009, the spouses Dizon adamantly refused to settle their obligation. According to CFMFC, the amount of the loan, as of February 5, 2010, or at the time of the filing of the Complaint, amounted to P53,550.00 inclusive of interest, surcharge and attorney's fees.

In their Answer,[6] the spouses Dizon vehemently disavowed the loan they allegedly contracted with CFM Lending and contended that “they never have the chance to execute or sign any documents in the office of the plaintiff.”[7] As an affirmative/special defense, they averred that their signatures appearing on the Promissory Note were forgeries as what they explained in their reply to the demand letter dated November 12, 2009. They further pleaded that they did not receive the monetary proceeds from the alleged loan. Finally, the spouses Dizon claimed that CFMFC were in bad faith when it waited for almost ten years before it filed the case for collection; thus, it was guilty of laches.

After the parties filed their respective Position Papers, the MTCC rendered a Decision[8] dated August 26, 2010, ruling that the contract of loan, as evidenced by the Promissory Note, was valid and binding between the spouses Dizon and CFMFC. The MTCC did not favor the Dizons' defenses, including the issue of forgery, as the same was not proved by preponderant evidence. It thus disposed the case as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants-spouses Manolo Marcial and Elsie Grace Dizon, ordering them to pay plaintiff the amount of P53,550.00 representing the total amount due as stated in the Statement of Account (Exhibit "D") plus interest and penalty charges of 2% per month of the unpaid sum from the filing of the complaint until fully paid; and to pay the cost[s] of suit.

SO ORDERED.[9]

Feeling aggrieved, the spouses Dizon appealed to the RTC insisting that they neither borrowed any sum of money from CFMFC nor executed the Promissory Note in favor of the latter. Also, they opined that CFMFC had no legal personality to sue them as the actionable document which served as the basis for its cause of action was executed in favor CFM Lending Investors, and there was no evidence to show that the latter was absorbed or converted into what is now known as CFMFC. Furthermore, the spouses Dizon reiterated that their signatures appearing on the Promissory Note as well as the loan application were forged, thus, the same were void and inexistent.

On February 28, 2011, the RTC rendered the assailed Decision reversing the findings of the MTCC and dismissing the Complaint on the sole ground of lack of cause of action. It ruled that CFMFC failed to present proof of its legal capacity to sue the spouses Dizon, viz:

A perusal of the documents presented and offered by the plaintiff, in support of its claim as to the existence of the alleged loan, contracted by the defendants-spouses sometime [on] July 26, 2001 xxx readily shows that it was CFM Lending Investors with whom the latter contracted the subject loan, and not CFMendoza Finance Corporation. Indeed, it could not be CFMendoza Finance Corporation for, the Securities [and] Exchange [Commission], Dagupan City Office received a copy of its Articles of Incorporation only on June 5, 2003 xxx. Aside from the indication made by the plaintiff in the subject complaint that it was formerly CFM Lending Investors, as well as its allegation that it is the resulting entity out of the conversion of the lending investor, there nothing appears from the record of this case showing that the plaintiff and CFM Lending Investors are one and the same corporation.[10]

CFMFC sought reconsideration of the adverse Decision but the same was likewise denied by the RTC in its Resolution dated May 28, 2011.[11] Hence, the instant Petition alleging that the RTC committed the following errors:

- A. It has committed an error in reversing the Decision of the Municipal Trial Court and in dismissing the complaint, and in finding that plaintiff and herein petitioner had no capacity to sue the defendants;
- B. It has committed an error in not dismissing the appeal of the defendants-appellants (herein respondents) and in not deciding the case by evidence presented.[12]

The appeal is partly meritorious.

In reversing the decision of the MTCC, the RTC did not delve into the merits of the case; instead, it dismissed the Complaint on the ground that CFMFC had no legal capacity to sue the spouses Dizon as the latter contracted the loan with CFM Lending and that there was no indication that CFMFC and CFM Lending were one and the same entity.

We do not agree.

We note that the spouses Dizon did not object to CFMFC's legal capacity to sue. A perusal of the Answer shows that the spouses Dizon did not plead this matter as one of their affirmative/special defenses. Section 1, Rule 9 of the Revised Rules of Court, in relation to Section 1, Rule 16, explicitly provides that the defense of "legal capacity to sue" is not one of those defenses which cannot be waived; thus, such defense must be invoked in an answer or motion to dismiss in order to prevent a waiver thereof.[13]

Moreover, CFMFC expressly alleged in its Complaint that it was formerly known as CFM Lending Investors. This allegation regarding the plaintiff's identity was not specifically denied by the spouses Dizon in their Answer and, in the absence of such specific denial, the allegation is deemed admitted in accordance with Section 11 of Rule 8 of the Revised Rules of Court. In *Cua v. Wallem Philippines Shipping, Inc. and Advance Shipping Corporation*,^[14] the Supreme Court succinctly elucidated the purpose of making specific denial of the material allegations in the Complaint, viz:

A specific denial is made by specifying each material allegation of fact, the truth of which the defendant does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial.

In light of the foregoing, We ruled that the RTC erred when it dismissed the Complaint solely on the ground of lack of legal capacity to sue considering that the said defense was no longer available to the spouses Dizon. By their failure to plead the said defense in their Answer as well as their failure to specifically deny the identity of CFMFC, the spouses Dizon are deemed to have admitted that CFM Lending and CFMFC were one and the same. It is too late for the RTC, therefore, to make a ruling on this matter during appeal as the same was not raised and passed upon in the proceedings before the MTCC. Indeed, the dismissal of the Complaint based on lack of legal capacity alone resulted in the desecration of the spirit of fair play and due process.

We now go on with the substantive issue of the case which is whether or not the spouses Dizon were indebted to CFMFC. It is the unbending rule in civil cases that the party having the burden of proof must establish his case by preponderance of evidence which means that the evidence as a whole adduced by one side is superior to that of the other. In other words, preponderance of evidence means the greater weight of evidence – or evidence that outweighs the evidence of the adverse party.^[15]

Here, the Promissory Note more than proved the spouses Dizon's indebtedness because, by itself, it is the best evidence of the loan.^[16] It is not even necessary for FCMFC to present the other documents, i.e. loan application form, loan release and discount statement, and co-maker's statement, to establish the existence of the loan or that the borrower received the amount.^[17] The Promissory Note signed by the Dizons raised the presumption that they received the proceeds of the loan, and by signing the same they undertook to pay upon maturity based on the terms and conditions stipulated therein. They cannot, without cause, renege on the obligation which they had acknowledged and committed to perform. Apropos is the ruling of the Supreme Court in *Dela Pena v. Court of Appeals*:^[18]

By signing the promissory note, petitioners acknowledged receipt of the loan amounting to P81,000.00, and undertook to pay the same, plus interest and penalty, on or before October 14, 1984.

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As we held in *Sierra v. Court of Appeals*, and recently in *Henry dela Rama Co v. Admiral United Savings Bank*:

A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.

Indeed, the spouses assailed the authenticity and due execution of the promissory note, alleging that “they never ha[d] the chance to execute or sign any documents in the office of the plaintiff”^[19] and pleading as an

affirmative/special defense in their Answer that “their alleged signature [o]n the Promissory Note was a product of falsification, fraud and misrepresentation.”[20]

We are not swayed.

A document formally presented is presumed to be genuine until it is proved to be fraudulent; this presumption must be overcome but this can only be done by convincing testimony and effective illustrations.[21] Thus, in a catena of cases, the Supreme Court invariably ruled that forgery cannot be presumed; it must be proved, not only by preponderance, but by clear, positive and convincing evidence[22] and whoever alleges it has the burden of proving the same.[23]

In this case, the spouses Dizon failed to present ample proof to support their claim as their documentary evidence did not overcome the presumption of the genuineness of the Promissory Note. We note that the spouses Dizon did not present an expert witness like a handwriting expert from the National Bureau of Investigation to compare their signatures appearing on the Promissory Note from the sample signatures they submitted to the court such as those contained in the Verification attached in the Answer, the Certificate of Marriage, and cash invoices signed by Manolo. They should have at least submitted the affidavit of the experts on this field to attest that the alleged forged signature and the sample signatures could not belong to the same person.

Moreover, We perused the records and found that even the sample documents submitted by spouses Dizon have considerable variations in writing styles. Manolo's signatures on the Verification attached to the Answer and the Position Paper executed on February 19, 2010 and July 19, 2010, respectively, are distinct from each other in terms of strokes and slants. The stark dissimilarity is clear even to the naked and untrained eye. However, his signature on the contested Promissory Note that was dated July 26, 2001 appears very similar with his signature on the Certificate of Marriage which he signed on May 8, 1999. Considering the variations in his signature from one document to another, the only ineluctable conclusion is that Manolo managed to change his signature through the passage of time such that it cannot be said that his signature on the Promissory Note was forged by merely comparing it with the documents he signed subsequent thereto. On the other hand, Elsie's signature in the Promissory Note appeared consistent with her signature appearing in the other documents on record. All told, there is no strong and convincing evidence that the spouses Dizon's signatures on the Promissory Note were forged.

As regards the monetary award granted by the MTCC, We modify. The records show that the principal amount of the loan was P30,000.00 with interest at the rate of 5% per month and the spouses Dizon had paid P23,000.00,[24] leaving a balance of P7,200.00 as of November 5, 2001. The balance, however, ballooned to P53,550.00[25] because of the imposition of 5% monthly interest and 25% attorney's fees as stipulated in the Promissory Note. Following the sound instruction of the Supreme Court in *Spouses Castro v. De Leon, et al.*,[26] We declare the monthly interest rate of 5%, or 60% per annum, as unconscionable and should be equitably reduced to the legal rate of 12% per annum, thus:

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*, we annulled a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan and a 6% per month or 72% per annum interest on a P60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum.

In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the *Kasulatan* is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the

law. It is therefore void ab initio for being violative of Article 1306 of the Civil Code. With this, and in accord with the Medel and Ruiz cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the Kasulatan.

However, Circular No. 799, Series of 2013 of the Bangko Sentral ng Pilipinas and the ruling of the Supreme Court in *Nacar v. Gallery Frames and/Felipe Bordey, Jr.*,^[27] further reduced the legal rate of 12% per annum to 6% per annum commencing on July 1, 2013. Thus, the balance of P7,200.00 shall earn an interest of 12% per annum reckoned from the date following the maturity of the loan on October 24, 2001^[28] until June 30, 2013; and the rate of 6% per annum shall apply from July 1, 2013 until its full payment.

Likewise, an award of attorney's fees equivalent to 25% of the total amount due, which was in accordance with the stipulation of the parties, is proper.^[29]

WHEREFORE, the Decision dated February 28, 2011 of the Regional Trial Court, Branch 44, of Dagupan City in Civil Case No. 2010-0270-D is hereby REVERSED and SET ASIDE. The Decision dated August 26, 2010 of the Municipal Trial Court in Cities, Branch 3, of Dagupan City in Civil Case No. 16336 is AFFIRMED with the following MODIFICATIONS:

1. The Spouses Manolo Marcial and Elsie Grace Dizon shall jointly and severally pay CFMendoza Finance Corporation the amount of P7,200.00 with legal interest of 12% per annum from October 25, 2001 to June 30, 2013; and 6% per annum from July 1, 2013 until its full satisfaction.
2. They are likewise ordered to pay attorney's fees equivalent to 25% of the total monetary award.

SO ORDERED.

Punzalan Castillo, M.P., Chairperson and Lazaro-Javier, A.C., J.J., concur.

[1] Rollo, pp. 42-46.

[2] *Id.*, p. 46.

[3] *Id.*, pp. 22-24.

[4] *Id.*, p. 26.

[5] *Id.*, pp. 29-30.

[6] *Id.*, pp. 35-38.

[7] *Id.*, p. 35.

[8] *Id.*, pp. 40-41.

[9] *Id.*, p. 41.

[10] *Id.*, pp. 45-46.

[11] *Id.*, pp. 48-49.

[12] *Id.*, p. 6.

[13] See *Boston Equity Resources, Inc. v. Court of Appeals*, G.R. No. 173946, June 13, 2013.

[14] G.R. No. 171337, July 11, 2012.

[15] DECS v. Rosario, et al., G.R. No. 146586, January 26, 2005.

[16] Ycong v. Court of Appeals, G.R. No. 153758, February 22, 2006.

[17] Section 24 on the Law on Negotiable Instruments provides: “Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration and every person whose signature appears thereon to have become a party thereto for value.

[18] G.R. No. 177828, February 13, 2009.

[19] Rollo, p. 35.

[20] Id., p. 36.

[21] Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company and Court of Appeals, G.R. No. 129015, August 3, 2004.

[22] Tenio-Obsequio vs. CA, 230 SCRA 550.

[23] Sumbad vs. CA, 308 SCRA 575.

[24] Statement of Account. Rollo, p. 28.

[25] Id., p. 27.

[26] G.R. No. 168940, November 24, 2009.

[27] G.R. No. 189871. August 13, 2013.

[28] Considering the stipulation that “xxx in case of failure to to pay any installment due, or any part thereof, the entire remaining obligation becomes due and payable automatically, without need of previous demand or notice xxx” Rollo, p. 26.

[29] See first paragraph of Article 2208 of the Civil Code.

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