BACOLOD D'JADE MARKETING, INC., REPRESENTED BY ITS DIRECTOR RAUL MARTIN A. SISON, PLAINTIFF-APPELLEE, VS. ANTONIO "BOY" LEDESMA, DEFENDANT-APPELLANT.

Ponente: DIY, J.

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DIY, J.:

Before Us is an Appeal filed by defendant-appellant Antonio Ledesma ("Ledesma", for brevity) before this Court assailing the December 07, 2009 Decision[1] of Branch 51, Regional Trial Court, Bacolod City. The dispositive portion of the Decision reads:

> WHEREFORE, there being no evidence to the contrary, the Court finds in favor of the plaintiff and hereby orders the defendant to pay the plaintiff the following:
>
> - The amount of P897,634.60 which amount shall earn an interest of 2% per month from the tine [sic] of the filing of this case until fully paid;
>
> - 25% of the principal amount as attorney's fees; and
>
> - Pay the cost of suit.
>
> SO ORDERED.

The Antecedents

The instant appeal originated from a complaint[2] for collection of a sum of money filed by plaintiff-appellee Bacolod D'Jade Marketing, Inc. ("BDMI", for brevity) against Ledesma. Said complaint was subsequently amended.[3] An "Answer with Compulsory Counterclaim"[4] dated January 19, 2009 was filed by Ledesma. After pre-trial,[5] trial on the merits ensued.

Plaintiff-appellee's version[6]

BDMI alleged that it is engaged in the selling, wholesale and retail, of poultry and other animal feeds including veterinary products. BDMI also declared that Ledesma had been its customer since 1998 and that he is a known breeder of fighting cocks in Negros Occidental. The terms of payment between BDMI and Ledesma consisted of an arrangement that Ledesma would buy his feeds, poultry requirements, and veterinary needs from BDMI on credit, payable in thirty (30) days. It was also agreed upon by the parties that in cases of overdue accounts, the purchases shall be charged with interest of 2% a month, plus 25% of the principal amount as attorney's fees and costs of suit.

In the beginning, Ledesma had no problems with his accounts with BDMI. But in December 2005, he started to be remiss in his obligations to pay his overdue accounts. Based on BDMI's computation and receipts, Ledesma had a total outstanding overdue and unpaid account with BDMI in the principal amount of P 1,447,634.60 for purchases on credit covering the period from December 2005 to October 2006.

BDMI's counsel Atty. Barcelona sent a letter[7] dated May 31, 2007 to Ledesma, through registered mail, which

demanded payment from Ledesma of the latter's overdue accounts with BDMI within five (5) days from receipt thereof.

Thereafter, Ledesma negotiated with BDMI that he be allowed to pay his overdue account within a period of six (6) months. BDMI agreed on the condition that Ledesma would continue to buy his poultry and veterinary needs from BDMI on a cash basis, and that Ledesma would pay his overdue accounts in full within the period of six (6) months without need of further demand from BDMI, to which Ledesma agreed.

Until April 26, 2008, Ledesma had made payment on his overdue accounts in the total amount of P 550,000.00. After making said total payment, Ledesma stopped buying BDMI's products and stopped making payments on his overdue accounts.

On October 23, 2008, Ledesma paid an additional amount of P50,000.00, chargeable to his overdue accounts. As of the filing of the complaint, the total principal unpaid amount was P 897,634.60.

Defendant-appellant's version

Ledesma filed before the court a quo an "Answer with Compulsory Counterclaim."[8] Thereafter, Ledesma waived his right to present evidence for his defense.[9]

The statement of facts[10] in the appellant's brief contains the following allegations:

- BDMI is a duly organized domestic corporation.

- Ledesma was one of the customers of BDMI.

- Ledesma purchased products from BDMI on credit.

- The terms of payment for the credit purchases of Ledesma were as follows: payable within thirty (30) days, but customarily extended after negotiations between both parties.

- The stipulation on the 2% interest per month indicated in the invoice credit was never discussed by BDMI with Ledesma. Moreover, such interest has never been implemented by BDMI since 1998.

- From time to time, Ledesma would pay his credit purchases beyond the thirty (30)-day period and the 2% interest would not be applied by BDMI.

- No joint accounting was conducted by both parties that would show the true and correct balance of Ledesma's account prior to the filing of the complaint before the court a quo.

- BDMI still filed the instant case despite the agreed interval of payment and despite receiving Ledesma's payment of P50,000.00.

- No legal demand was served upon Ledesma prior to the filing of the instant case before the court a quo.

The court a quo ruled in favor of plaintiff-appellee. Hence, this appeal filed by defendant-appellant based on the following assigned errors:[11]

- The Trial Court made a reversible error in not finding that the filing of this case is premature as there was no legal demand served upon the Defendant-appellant prior to the filing of this case.

- The Trial Court made a reversible error in finding that Plaintiff-appellee's computation of the amount due is correct and duly supported by competent evidence.

- The Trial Court made a reversible error in finding that Plaintiff-appellee is entitled to the interest/penalty charges, attorney's fees and cost of the suit.

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(Emphasis omitted)
On the other hand, plaintiff-appellee states its refutation, to wit:

> Defendant-appellant failed to specifically deny under oath the actionable documents (invoices), thus their genuineness and due execution are deemed admitted[.]
>
> Defendant-appellant's assertions that the filing of the case is premature in the absence of prior demand is without factual and legal basis[.]
>
> Defendant-appellant's waiver to present evidence means that the bare allegations in his Answer do not have evidentiary support[.]
>
> Defendant-appellant's averment that the absence of the accounts renders the filing of the case premature lacks basis[.]

The Ruling of the Court
This Court shall discuss the errors assigned by defendant-appellant insofar as they are within the ambit of the issues agreed upon by the parties as stated in the pre-trial order. This is pursuant to the rule that the conduct of the trial shall be confined and limited to the issues as stated in the pre-trial order.[12] Thus, those not indicated in the pre-trial order are deemed abandoned or waived. Moreover, the following pronouncement of the High Court is clear:

> It is settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. Thus, facts pleaded in the petition and answer, as in the case at bar, are deemed admissions of petitioner and respondents, respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions.[13]

(Citations omitted)
Matters and issues neither defined in the pre-trial order, nor tried by the trial court with the implied acquiescence of the parties and decided by the court without objection, cannot be raised and considered for the first time on appeal,[14] lest this Court strays on peripheral and irrelevant matters.[15]

The Pre-Trial Order[16] issued by the court a quo contains the following facts admitted by the parties:

> - That plaintiff is a duly organized corporation according to Philippine laws and one of its directors Raul Martin A. Sison is duly authorized to represent the corporation;
>
> - That the defendant is one of the customers of the plaintiff and he purchased the products of the plaintiff on credit;
>
> - That the term [sic] of payment for the credit purchases of the defendant is payable within thirty (30) days but the same could be extended upon negotiation between plaintiff and defendant;
>
> - That the 2% Interest on the purchase on credit is stipulated on the credit sales invoice but the 2% interest will be applied only if the account is not paid within thirty (30) days;
>
> - Both the plaintiff and defendant admit that all purchases on credit are covered by Charge invoices;

The issues were also defined by the parties as reflected in the pre-trial order, viz:

> - Whether or not defendant is liable to the plaintiff on the amount of P897,634.60 plus interest of 2% [and] attorney's fees;
>
> - Whether or not the defendant is entitled to the counterclaim as prayed for in his answer.

The due execution and authenticity of plaintiff-appellee's exhibits as listed in the pre-trial order were not denied by defendant-appellant. Defendant-appellant presented no single document during the pre-trial.

In this appeal, defendant-appellant argues that he is not guilty of non-performance of his obligation to pay plaintiff-appellee since there was no legal demand served upon him. He further intimates that he did not receive any demand letter from plaintiff-appellee and that the invoices presented by plaintiff-appellee cannot be held as conclusive evidence of the purchases. Defendant-appellant also maintains that plaintiff-appellee is not entitled to interests, attorney's fees, and costs of suit.

As can be gleaned from the records, only a registry receipt[17] was presented by plaintiff-appellee as proof of mailing.

Be that as it may, the issue of whether or not the demand letter was received by defendant-appellant was not stated as an issue in the pre-trial brief. This issue cannot be raised for the first time on appeal. Moreover, when the demand letter was listed as exhibits in the pre-trial order, defendant-appellant did not even deny the existence of such document.

The existence of the invoices as listed in the pre-trial order proves that defendant-appellant knew of his existing debt. In fact, one of the admitted facts by the parties in the pre-trial order is: "Both the plaintiff and defendant admit that all purchases on credit are covered by Charge Invoices."

The genuineness and due execution of the subject invoices were not denied by defendant-appellant at the pre-trial. Besides, defendant-appellant did not specifically deny under oath the genuineness and due execution of said invoices pursuant to Section 8, Rule 8[18] of the 1997 Rules of Civil Procedure.

Hence, the subject invoices listed in the pre-trial order are binding between plaintiff-appellee and defendant-appellant.

A reading of the invoices reveals the following statement:

> Received the above in good condition. Parties expressly submit themselves to the Jurisdiction of the courts of Bacolod City[.] [A]ny legal Action arising out of this transaction and to pay 25% for attorney's fees plus of suit [sic]. Interest of 2% per month will be charged on overdue accounts.

Article 1306 of the Civil Code provides that the "contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

In the instant case, the charge invoices expressly stipulated the payment of interest and attorney's fees in case of overdue accounts and collection suits. The charge invoices are in the nature of contracts of adhesion. It has been settled that contracts of adhesion are as binding as ordinary contracts. Those who adhere to the contract are free to reject it, but if they adhere, they give their consent.[19]

By contracting with plaintiff-appellee and not interposing any objection to the stipulations in the charge invoices, defendant-appellant did not only bind himself to pay the stated selling price. He also obligated himself to:

> 1) Pay interest of 2% per month on overdue accounts;
>
> 2) Pay the 25% of the principal amount demanded by way of attorney's fees; and
>
> 3) Pay the costs of suit if plaintiff-appellee is forced to file any legal action to recover unpaid accounts.

Therefore, the court a quo did not err in using the invoices as basis for the award of interest, attorney's fees, and

costs of suit.

Besides, defendant-appellant did not submit any iota of proof to refute the allegations of plaintiff-appellee other than those stated in his "Answer with Compulsory Counterclaim" and appellant's brief since he waived his right to present his evidence before the lower court. To the mind of this Court, without any evidence coming from the defense, defendant-appellant's allegations are bare and self-serving.

On a final note, it is a well-entrenched doctrine "that factual findings of the trial court are accorded the highest degree of respect and are considered conclusive between the parties." Though jurisprudence recognizes highly meritorious exceptions,[20] none of them obtain herein that would warrant a reversal of the challenged Decision. This Court accords deference to the trial court's appreciation of documentary and testimonial evidence.

WHEREFORE, premises considered, the instant appeal is DENIED. The December 07, 2009 Decision[21] of Branch 51, Regional Trial Court, Bacolod City is AFFIRMED.

SO ORDERED.

Delos Santos, E.L., (Chairperson) and Maxino, P.A.A. JJ., concur.

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[1] Records, pp. 254-256.

[2] Id., pp. 1-119.

[3] Id., pp. 128-141 (mainly relative to its attachments).

[4] Id., pp. 142-147.

[5] Id., pp. 181-195

[6] Amended Complaint, and TSN, August 18, 2009, pp. 4-29 and September 15, 2009, pp. 4-30.

[7] Exhibit "C". Records, p. 119.

[8] Records, pp. 142-147.

[9] Id., p. 253.

[10] Id., pp. 46-47.

[11] Id., p. 46.

[12] Sec. 7, Rule 18, 1997 Rules of Civil Procedure.

[13] Republic of the Philippines vs. Sandiganbayan, et al., G.R. No. 152154, July 15, 2003.

[14] Sec. 15, Rule 44, 1997 Rules of Civil Procedure.

[15] See Bellosillo, Effective Pre-trial Technique (2011 ed.), pp 282-284.

[16] Records, pp. 181-195.

[17] Exhibit "C-1". Records, p. 119.

[18] Section 8. When an action or defense is founded upon a written instrument, copied in 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

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claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[19] Asian Construction, et al. vs. CAPASCO, G.R. No. 167942, June 29, 2010.

[20] D'Aigle vs. People of the Philippines, G.R. No. 174181, June 27, 2012.

[21] Records, pp. 254-256.

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