

AMECO CONTRACTORS RENTALS, INC., PLAINTIFF-APPELLEE, VS. FIL-ESTATE PROPERTIES, INC., DEFENDANT-APPELLANT.

Ponente: TAYAG, J.

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TAYAG, J.:

This is an appeal from the March 31, 2000 Decision[1] of the Regional Trial Court, Branch 92, Quezon City, in Civil Case No. Q-99-38162, an action for Collection of Sum of Money, the decretal portion of which reads:

“WHEREFORE, foregoing premises considered, defendant is hereby ordered to pay plaintiff the amount of P960,075.00 plus 2% interest compounded monthly until fully paid and to pay the cost of suit.

SO ORDERED.”

The trial court summarized the factual and the procedural antecedents as follows:

“This is an action for 'Collection of Sum of Money'” filed on July 14, 1999 by plaintiff Ameco Contractors Rentals, Inc., against defendant Fil-Estate Properties, Inc.

On October 19, 1999, the defendant corporation was declared in default for failure to file its Answer within the legal period allowed by the Court. The plaintiff was allowed to present its evidence ex-parte.

The evidence for the plaintiff adduced ex-parte tends to show that defendant Fil-Estate Properties, Inc., entered into a contract of lease with the plaintiff Ameco Contractors Rentals, Inc., over one equipment, Caterpillar Model D8N Truck-type tractor for a total period of three (3) months; that the former agreed to pay the latter the amount of three thousand (P3,000.00) pesos per hour for a minimum of two (2) hundred hours per month; that in accordance with the terms and conditions of the rental contracts, three billings for the period March 7, 1997 to July 15, 1997 were sent to the defendant; that the computation of the rental billings was based on the summary of operating hours and daily equipment time records; that there were partial payments on the first two billings sent to the defendant but no payment was made on the third billing; that the unpaid rentals of the defendant amounts to P960,075.00 exclusive of 2% interest per month compounded monthly; that on February 8, 1999, a written demand letter was sent to the defendant by the plaintiff but the former ignored said demand; that on April 15, 1999, another demand letter was sent to the defendant by the plaintiff but the same was again ignored by the defendant; and that by reason of the refusal of the defendant to pay its obligation, the plaintiff suffered damages.”

The case having been submitted for resolution, the court a quo made the following pronouncements as to its findings:

“Assessing the plaintiff's uncontroverted evidence, supported by equally uncontroverted documentary evidence, and in the absence of evidence to prove otherwise, the Court finds that the plaintiff has substantially established its cause of action against herein defendant which warrants the granting of the reliefs prayed for.

The evidence established that defendant owes plaintiff the amount of NINE HUNDRED SIXTY THOUSAND SEVENTY FIVE (P960,075.00) PESOS and that despite repeated demands for its payment, defendant unjustly refused to pay.

In the absence of controverting evidence, the facts as adduced, the categorical statements of the plaintiff's witness and its documentary evidence stand.

WHEREFORE, foregoing premises considered, defendant is hereby ordered to pay the plaintiff the amount of P960,075.00 plus 2% interest compounded monthly until fully paid and to pay the cost of suit.

SO ORDERED.”[2]

Aggrieved by the afore-stated Decision, Defendant-appellant interposed this Appeal contending that:

THE LOWER COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO PAY P960,075.00 REPRESENTING ITS ALLEGED PRINCIPAL OBLIGATION WITH 2% INTEREST COMPOUNDED MONTHLY UNTIL FULL PAYMENT, CONSIDERING THAT:

(A)

THE TESTIMONY OF PLAINTIFF 'S SOLE WITNESS IS INCREDIBLE AND INADMISSIBLE TO PROVE THE MATERIAL ALLEGATIONS OF THE COMPLAINT.

(B)

THE DOCUMENTARY EVIDENCE PRESENTED BY PLAINTIFF -APPELLEE AND THE SIGNATURES THEREIN ARE INADMISSIBLE SINCE THESE WERE NOT PROPERLY IDENTIFIED BY PLAINTIFF-APPELLEE'S SOLE WITNESS.

In other words, Defendant-Appellant contends that it was error on the part of the court a quo to find it liable for the payment of P960,075 plus 2% interest compounded monthly until full payment because: (a) the testimony of plaintiff-appellee's sole witness is incompetent and incredible; and (b) plaintiff-appellee's documentary evidence, particularly the signatures therein, were not sufficiently identified.

In its Appellant's Brief, Defendant-Appellant made the following assertions, to wit: that the testimony of plaintiff-appellee's sole witness is much too broad and short of the quantum required to establish Defendant-Appellant's liability in this case; that the witness had no personal knowledge of the transaction denominated as lease contract over a certain tractor unit as well as the terms thereof; that the signatures in the contracts of lease were not properly and competently identified by plaintiff-appellee's sole witness because he failed to lay the basis for such identification; and that while he stated that he was familiar with the signatures of the parties' authorized representatives, namely, Engr. Cecilio Natividad, Engr. Nick Gomez, Terry Morgan, and Preciosa Joy Salvanerra, he failed to state how and why[3].

We do not agree.

First and foremost, this is a collection suit for the unpaid rentals over a certain tractor unit. Plaintiff-appellee's cause of action is founded upon the non-performance of defendant-appellant of a contractual obligation contained in the written contract of lease. To hold the defendant-appellant liable, plaintiff-appellee has to prove, first, that it entered into a contract of lease with the defendant-appellant; and second, that defendant-appellant failed to comply with his obligation (i.e., to pay) under the contract. Since this is an action founded on an obligation contained in a written instrument, Section 3, Rule 130 of the Revised Rules of Court[4] provides that the best evidence to prove the existence of the contract is the original document itself. And since the Rules provide that no evidence other than the original document itself shall be admissible when the subject of the inquiry is the contents of a document, it follows therefore that testimonial evidence regarding the terms and conditions of a contract is no longer necessary. In fact, the rule on Parol Evidence further states that “ when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written

agreement.” If at all, the testimony of the sole witness in this case merely served to pave the way for the identification of the subject lease contract, i. e., that the document being presented to the court is the same lease contract that the parties entered into.

In the light of the foregoing, we believe and so hold that the sole witness is competent to lay the basis for the identification of the subject lease contract because by the nature of his function and in the normal course of performing his duties as rental supervisor of plaintiff-appellee, he is required not only to become knowledgeable but more so familiar with the provisions of the contract to best represent the interest of plaintiff-appellee in their dealings with their clients. It naturally follows also, that he must acquaint himself with their clients with whom they are transacting.

More importantly, since this is an action founded on a contractual obligation, Section 8, Rule 8 of the Revised Rules of Court provides that: “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 claims to be the facts; xxx”

The records of this case revealed that the court a quo declared the defendant-appellant in default when, despite the grant of its three motions for extension of time to file an Answer, defendant-appellant failed to file the same. Having wasted all the the three chances the court a quo gave defendant-appellant to timely contest plaintiff-appellee's actionable documents in its Answer, the genuineness and due execution of the latter should be deemed admitted.

Anent the issue of insufficient identification of the signatures in the lease contract by the sole witness for failure to lay the basis therefor, defendant-appellant failed to consider the provisions of Section 50 (b) Rule 132 of the Revised Rules of Court in relation to Section 22 Rule 132 thereof. Section 50 (b) Rule 132, which speaks of the opinion of ordinary witness being one of the exceptions to the Hearsay Rule, provides that, “ The opinion of a witness, for which proper basis is given, may be received in evidence regarding—xxx; (b) a handwriting which he has sufficient familiarity; xxx.

On the other hand, Section 22 Rule 132 of the Revised Rules of Court states that “ the handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because xxx he has seen handwriting purporting to be his upon which the witness has acted or has been charged and has thus acquired knowledge of the handwriting of such person. xxx.”

Applying the aforesaid provisions to the case at bar, we conclude that the identification of the signatures in the lease contract by the sole witness is sufficient. In the course of the performance of his duties, he must have seen documents bearing the handwriting of the authorized representatives of the parties to the subject lease contract, namely, Engr. Cecilio Natividad, Engr. Terry Morgan, Nick Gomez and Preciosa Joy Salvanerra.

“The test to determine the value of the testimony of a witness is whether or not such is in conformity with human knowledge and consistent with the experience of mankind-- whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance.” [5] As rental supervisor of plaintiff appellee, it is in conformity with human knowledge and consistent with the experience of mankind that plaintiff-appellee's sole witness should work closely with the above signatories for the duration of the contract and even beyond, to best serve their client, herein defendant-appellant; and to ensure that the business interests of their employer, herein plaintiff-appellee, are protected. Accordingly, “Anyone who is familiar with a person's writing from having seen him write , from carrying on correspondence with him or having become familiar with his writing through handling documents and papers known to have been signed by him, may give his opinion as to the genuineness of

that person's purported signature when it becomes material in the case.”[6] (Emphasis supplied)

“Doubtless, a proper foundation must be laid for the admission of documentary evidence, i.e., the identity and authenticity of the document must be reasonably established as a prerequisite to its admission in evidence. However, a party who does not deny the genuineness of the proffered instrument may not object that it was not properly identified before it was admitted in evidence. The extent of the foundation for documentary proof lies in the discretion of the trial judge.”[7]

Furthermore, objection to the documentary evidence must be made at the time it is formally offered. Corollarily, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent[8]. In the instant case, since defendant-appellant was declared in default because of its failure to file an Answer, it is only entitled to notice of subsequent proceedings but not to take part in the trial.[9] Consequently, defendant-appellant was barred from making the timely objection to the alleged hearsay evidence at the time it was formally offered. “The effect of such omission is obvious. The rule is that objection to the admission of evidence on the ground that it is hearsay can not be raised for the first time on appeal. The failure constitutes a waiver of his right to make such objection and consequently, the evidence offered may be admitted . Objection to its admission made for the first time on appeal is too late.”[10]

Having slept on its rights and awakened too late, defendant-appellant can not now raise its objections to the admission of ex-parte evidence of the plaintiff before this Court when the same could have done in the proceedings in the court a quo.

Ultimately, after all has been said and done, the following questions remain: Is defendant-appellant liable for the unpaid rentals? Are the evidence for the plaintiff sufficient to establish its claim? The court a quo finds that “the plaintiff has substantially established its cause of action against herein defendant which warrants the granting of the reliefs prayed for.”[11] Well-entrenched is the rule that “findings of facts of the trial court, its calibration of the testimonies of witnesses and the probative weight thereof and its conclusions based on the said findings are accorded by the appellate court high respect and will not be disturbed on appeal in the absence of any showing that the trial judge gravely abused in his discretion.”[12]

In the light of the foregoing, we find no reason to reverse the findings of the court a quo, save a slight modification in the award of interest. Hence, while the lower court correctly applied the 2% interest compounded monthly until full payment, the said interest shall itself earn 12% as legal interest from the time of the filing of the complaint in the Regional Trial Court on July 14, 1999, pursuant to the guidelines laid down in *Eastern Shipping Lines vs. Court of Appeals*. [13]

WHEREFORE, the instant appeal is denied. The decision of the lower court dated March 31, 2000 is hereby **AFFIRMED** with **MODIFICATION**. The amount equivalent to 2% interest compounded monthly shall itself earn 12% legal interest from the time of the filing of the complaint on July 14, 1999 until the amount due the plaintiff-appellee shall have been fully paid.

SO ORDERED.

Salazar-Fernando, (Chairperson) and Tijam, JJ., concur.

[1] Rollo, pp. 39-40

[2] Rollo, p. 40

[3] Rollo, pp. 26-30

[4] Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[5] People v. Horminia, 420 SCRA 102; People v. Patano, 399 SCTA 90

[6] Spencer vs. State, 237 Ind. 622, 147 N.E. 2D 581, 581, 72 A.L.R. 2D 300, pp.306-307; Pointer vs. State, 248 Ark. 710, 454 S.W. 2D 91 [1970]).

[7] 2 Jone on Evidence, 4th Ed., p. 964, 32 C.J.S. 476

[8] Section 36, Rule 133, Revised Rules of Court

[9] Section 3(a), Rule 9, Revised Rules of Court

[10] Marella vs. Reyes, 12 Phil. 1; U.S. vs. Choa Tong, 22 Phil. 562; U.S. vs. Ong Shiu, 28 Phil. 242; Allarde, et. al. vs. Abaya, 57 Phil. 909

[11] Rollo, p. 40, par. 1

[12] People vs. Sampaga, 425 SCRA 661; People vs. Allawan, 425 SCRA 426; People vs. Muros, 423 SCRA 69; Manangan vs. CA, 425 SCRA 169

[13] 234 SCRA 78, G.R. No. 97412, 12 July 1994. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan in forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due should itself earn legal interest from the time it is judiciously demanded. In the absence of stipulation, the rate of interest should be 12% per annum to be computed from default, i.e., from judicial or extra-judicial demand under and subject to the provisions of Art. 1769 of the Civil Code.

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