

SPOUSES ZOILO J. ABELLA AND GREGORIA S. ABELLA, PETITIONERS, VS. SPOUSES GRACE ABELLA AND ALDEN ABELLA, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

In this Petition for Review under Rule 42 of the 1997 Revised Rules of Civil Procedure, petitioners, SPOUSES ZOILO J. ABELLA and GREGORIA S. ABELLA, seek to reverse and set aside the April 22, 2013 Decision[1] of the Regional Trial Court (RTC), 6th Judicial Region, Branch 9, in Kalibo, Aklan, in Civil Case No. 9611 affirming the December 7, 2012 Decision[2] of the First Municipal Circuit Trial Court of New Washington and Batan, New Washington, Aklan in a case for Collection of Sum of Money and Damages filed by petitioners against the respondents SPOUSES ALDEN ABELLA and GRACE ABELLA.

The antecedent facts of the case, as summarized by the RTC in its Decision, reads as follows:

“Believing that he had not been completely paid the loan of Eight Hundred Thousand (Php 800,000.00) Pesos he extended to his nephew, Zoilo Abella joined by his wife sued Alden Abella and his wife Grace for collection of sum of money and damages. The loan was given way back in October 2002, and paid in installment, with the remaining balance of One Hundred Thousand (Php 100,000.00) Pesos issued a postdated check in September 2005 that was not made good by the defendant-spouses despite Zoilo's naive trust of returning the check without any written memorandum that it remained outstanding.

Months passed without any payment forthcoming, and an eventual reminder was met with a refusal to pay on defendants' claim of full payment. Defendants insisted in their Answer that Equitable-PCI Bank Check No. 152255 dated September 30, 2005 representing the remaining monetary obligation had been encashed by the plaintiffs.

As it turned out, the defendants did not only issue one, or two checks that September 2005, but three, postdated with three different dates for the same amount of One Hundred Thousand (Php 100,000.00) Pesos each as the outstanding balance of loan. Only the first dated September 30, 2005 was encashed with the bank, while of the remaining two dated November 30, 2005 and January 30, 2006 – the first was exchanged with cash by Grace, while the last is the subject of controversy, as to whether this was made good by the defendants in favor of their uncle Zoilo.

Zoilo insisted that the defendants have not made good the payment of the last check, even if he had already returned possession thereof to Grace. On the other hand, the defendants claim having also exchanged this last check with their payment in cash handed personally to their uncle, who for which reason returned the bill to them.

In resolving the controversy, the court a quo relied upon the strengths and weaknesses of the testimonial evidence of the parties, as well as on the presumption arising from the return of the check to the drawer-defendants.”

The dispositive portion of the decision of the MCTC is hereunder quoted, to wit:

“WHEREFORE, premises considered, this Court hereby renders judgment in favor of defendants by ordering the DISMISSAL of the instant Complaint and by directing herein plaintiffs to pay to herein defendants attorney’s fees and expenses of litigation in the sum of PhP 25,000.00 and to pay the costs.

SO OREDERED.”

Not satisfied with the ruling of the MCTC, petitioners moved for the reconsideration[3] thereof but the same was denied per Order[4] dated January 14, 2013. Hence, petitioners appealed the same to the RTC.

The parties were required to submit their respective memorandum,[5] after the submission thereof, the RTC rendered a decision affirming the MCTC, the dispositive portion thereof reads as follows:

“WHEREFORE, premises considered, the Court finds no cogent reason whatsoever to reverse, alter, or modify the assailed judgment of court a quo which is hereby AFFIRMED in toto.

SO OREDERED.”

A Motion for Reconsideration[6] was filed by petitioners but the motion was denied per Order[7] dated June 21, 2013.

Hence, petitioners filed the instant Petition for Review raising the following issues, to wit:

1. THAT THE LOWER COURT HAS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION IN CIVIL CASE NO. 1340 AND DECLARING THE RESPONDENTS TO HAVE FULLY PAID THEIR OBLIGATION TO THE PETITIONERS;
2. THE FINDINGS OF THE LOWER COURT ARE NOT IN ACCORDANCE WITH THE FACTS AND EVIDENCE PRESENTED DURING THE TRIAL OF THE CASE;

The instant petition is bereft of merit.

The primary issue before us is whether or not herein petitioners were able to prove the material allegations of their complaint.

Section 1, Rule 133 of the Rules of Court provides:

‘SECTION 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses’ manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.’

In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.[8]

In the instant case, the MCTC and the RTC are one in finding that petitioners failed to discharge their burden of proof. The pertinent portion of the MCTC decision is hereunder quoted with approval to wit:

“That plaintiffs failed to discharge the burden of proof which rests upon them is clearly shown by the inconsistencies in their testimonies particularly as to the time of payment of the second check dated November

30, 2005. During his cross-examination last April 27, 2009, plaintiff Engr. Zoilo Abella stated that this second check was returned by him to defendant Grace Abella after she gave him PhP 100,000.00 in cash last March 2006 in payment for its face value. However, during the presentation of the rebuttal evidence last April 19, 2012, Engr. Abella contradicted his previous testimony and declared under oath that this second check was paid by defendant Grace Abella when the latter went to his residence sometime last February 2006. After allegedly giving him PhP 100,000.00 representing the value of the second check, he returned to Grace the same. Unfortunately, co-plaintiff Gregoria Abella's testimony last May 4, 2009 only made matters worse. She claimed that the second check was paid by defendant Grace Abella last March 10, 2006 when the latter paid them a visit at their residence to discuss her loan account with her Uncle Zoilo. It was accordingly on the said date when Grace paid the face value of the second check and the same was returned to her by her Uncle Zoilo after receiving PhP 100,000.00 in cash from her."

Petitioners' contention that the documentary and oral testimonies of respondents are replete with inconsistencies thus negating the latter's claim of payment, is unconvincing.

Petitioners averred that respondents in their Answer with Motion to Dismiss as well as in their Amended Answer with motion to Dismiss alleged that full payment was made on September 30, 2005 thru check but in Grace Abella's testimony, she said that full payment was made on March 4, 2006 thru cash.

We perused over the said Answer with Motion to Dismiss and a cursory reading thereof reveals that contrary to the claim of the petitioners, herein respondents did not make a categorical statement thereat that final payment was made on September 30, 2005 thru check. Instead, it was stated in the said pleading that it was herein petitioners who stated in their complaint that on September 2005, a post dated Equitable – PCI check was issued by the respondent in favor of Zoilo Abella as payment of the said remaining obligation. True enough, it is stated in paragraph seven of the complaint "that sometime in September 2005, a post-dated Equitable PCI check was issued by the defendant in favor of plaintiff Zoilo Abella as payment of said remaining monetary obligation." Hence, respondents merely concluded that based on the said statement of petitioners in the complaint, then the encashment of the said check has indeed extinguished the obligation by way of full payment.[9]

Petitioners likewise contend that respondents presented a summary of payments where it was indicated that the last and final payment of PhP 100,000.00 was made on March 4, 2005 but in the testimony of respondent Grace Abella, she said that final payment was made on March 4, 2006. According to petitioners, this conflicting documentary and testimonial evidence bolsters their claim that no final payment was made at all.

Our perusal of the records of the case reveals that no such summary of payment was presented to us. Petitioners, in their petition, particularly footnote number 23 thereof, indicated that the said summary of payment was marked as Exhibit "6" of the respondents. But per the transcript of stenographic notes dated May 3, 2011, it appeared that Exhibit "6" is a certification issued by the Bureau of Immigration dated July 27, 2009.

Be that as it may, we note the declaration of the Supreme Court in the case of SPOUSES WILLIAM GUIDANGEN and MARY GUIDANGEN vs. DEVOTA B. WOODEN,[10] to wit:

"It is a matter of judicial policy to accord the trial court's findings of facts with the highest respect and not to disturb the same on appeal unless there are strong and impelling reasons to do so. The reason for this is that trial courts have more opportunity and facilities to examine factual matters than appellate courts. They are in a better position to assess the credibility of witnesses, not only by the nature of their testimonies, but also by their demeanor on the stand.[11] No clear specific contrary evidence was cited by the CA to justify the reversal of the trial court's findings. Thus, in this case, between the factual findings of the trial court and those of the CA, those of the trial court must prevail over those of the latter.[12]"

In like manner, we also find correct and with sufficient legal bases MCTC's pronouncement regarding the award

of attorney's fees to the respondents, the same being in accordance with Article 2208 of the Civil Code which provides that:

“ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support; (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.”

Considering the circumstances of the instant case, we find that respondents are entitled to recover attorney's fees. There is no doubt that they were forced to litigate to protect their interest.

In sum, the MCTC was correct in dismissing the complaint and in ordering petitioners to pay attorney's fees and expenses of litigation. The RTC was also correct in upholding the finding of the MCTC.

WHEREFORE, on the view above taken, the instant petition is DENIED. The assailed Decision dated April 22, 2013 of the Regional Trial Court (RTC), 6[th] Judicial Region, Branch 9, Kalibo, Aklan is hereby AFFIRMED in toto.

SO ORDERED.

Maxino, P.A., and Francisco, R.C., JJ., concur.

[1] Rollo at pp. 76-81.

[2] Rollo at pp. 25-36.

[3] Rollo at pp. 37-65.

[4] Rollo at p. 48.

[5] Memorandum for the Plaintiffs-Appellants, Rollo at pp. 49-65. Defendants-Appellees' Appeal Memorandum, Rollo at pp. 67-75.

[6] Rollo at pp. 82-87.

[7] Rollo at p. 89.

[8] HYATT ELEVATORS and ESCALATORS CORPORATION vs. CATHEDRAL HEIGHTS BUILDING

COMPLEX ASSOCIATION, INC., G.R. No. 173881, December 1, 2010 citing Villanueva v. Balaguer, G.R. No. 180197, June 23, 2009, 590 SCRA 661, 670.

[9] Rollo at p. 129.

[10] G.R. No. 174445 , February 15, 2012.

[11] Borillo v. Court of Appeals, supra note 43 at 147.

[12] Claudel v. Court of Appeals, G.R. No. 85240, July 12, 1991, 199 SCRA 113, 124.

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