

**MANUEL M. GONZALES, PLAINTIFF-APPELLANT, VS. ROSARIO R. CARANAY, ROSELLE MARIE R. CARANAY, REGISTER OF DEEDS OF QUEZON CITY AND THE ASSESSOR'S OFFICE OF QUEZON CITY, DEFENDANTS-...**

Ponente: LIBREA-LEAGOGO, C.C., J.

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**LIBREA-LEAGOGO, C.C., J.:**

Before this Court is an appeal from the Decision[1] dated 09 October 2013 and Order[2] dated 16 December 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 91, Quezon City in the case entitled “Manuel M. Gonzales v. Rosario R. Caranay, et al.” docketed as Civil Case No. Q-07-60977, which dismissed the Complaint and counterclaim and lifted the writ of attachment, and denied the Motion for Reconsideration for lack of merit, respectively.

Plaintiff-appellant and defendants-appellees filed their Briefs dated 19 August 2014[3] and 01 October 2014,[4] respectively. Per JRD verification[5] dated 17 February 2015, plaintiff-appellant failed to comply with the Resolution[6] dated 19 December 2014 which required him to inform this Court of the date of his receipt of the Appellees' Brief and to manifest if he is still filing a reply brief. Hence, plaintiff-appellant is deemed to have waived the filing of a reply brief and the case is submitted for decision.

**FACTUAL ANTECEDENTS**

Plaintiff Manuel M. Gonzales filed a Complaint[7] dated 15 August 2007 against defendants Rosario R. Caranay (“Rosario,” for brevity), Roselle Marie R. Caranay (“Roselle,” for brevity), Register of Deeds of Quezon City (“QC RD,” for brevity) and The Assessors Office of Quezon City (“Assessors Office,” for brevity) for collection of sum of money, rescission and damages with prayer for preliminary attachment, before the Regional Trial Court of Quezon City, docketed as Civil Case No. 07-60977.

On 05 September 2007, plaintiff testified in connection with his prayer for the issuance of a writ of attachment.[8] In an Order[9] dated 07 September 2007, the trial court ordered the issuance of a writ of attachment, upon the plaintiff's posting of a Php3,000,000.00 bond. Plaintiff filed the required bond[10] and in an Order[11] dated 13 September 2007, the same was approved, and a Writ of Preliminary Attachment[12] dated 17 September 2007 was issued.

Defendant Assessor's Office filed a Manifestation[13] dated 09 October 2007 which prayed that the filing of a responsive pleading and its attendance on the scheduled date of hearing and all subsequent proceedings be dispensed with.

Individual defendants, represented by their attorney-in-fact Marcelo L. Tecson, filed their Answer with Counterclaim[14] dated 16 October 2007. They also filed their Pre-Trial Brief[15] dated 18 December 2007.

On 08 January 2008, plaintiff filed a Motion for Leave and to Admit etc.[16] with attached Amended

Complaint.[17] Plaintiff averred in his Amended Complaint, inter alia, that: he is a retired entrepreneur occasionally engaged in the business of rediscounting or financing postdated checks; he charges a certain interest rate per month on the principal loan or on each issued check; defendant Rosario is a professional real estate broker and is also engaged in the business of buying and selling real estate properties using her own personal funds; plaintiff and defendant Rosario have been neighbors for more than 15 years since both reside at BF Homes Subdivision, Quezon City; plaintiff and his wife became close friends of defendant Rosario; because of defendant Rosario's close relationship with plaintiff's family, she was able to sell some real estate properties to plaintiff and his family; because of the friendship and close family ties, plaintiff and his family fully trusted defendant Rosario and considered her as a member of their own family; sometime in July 1995, defendant Rosario approached plaintiff and his wife seeking financial assistance; she wanted to borrow the sum of Php3,000,000.00 because she needed to finance one of the real estate projects she was then developing; she offered to pay interest, at the rate of 3% per month or Php90,000.00 per month until the whole loan has been paid; she also proposed to issue sixteen (16) postdated checks to cover the amount of the loan; defendant Rosario assured the plaintiff and his wife that her checks were fully funded and would not be dishonored when encashed; plaintiff and his wife agreed to lend her the said amount; on 09 August 1995, plaintiff and his wife gave defendant Rosario Php3,000,000.00 in cash; in return, defendant Rosario issued sixteen (16) postdated checks, with various dates, as staggered payment for the principal loan exclusive of the monthly interest of 3% on the said loan; during the first week of September 1995, defendant Rosario informed the plaintiff and his wife that she had no sufficient funds in her bank account to cover the said checks and pleaded to them not to deposit the same because the said checks would surely be dishonored; she explained that her real estate project hit a snag but would soon pick-up and promised that as soon as her real estate project materializes she would inform plaintiff when to deposit the same; greatly disappointed but conscious of their friendship, plaintiff agreed; plaintiff reminded her that she must continue paying the monthly interest on the said loan; since then and until January 2002, defendant Rosario consistently paid plaintiff the stipulated monthly interest on her loan; however, since February 2002 she already failed to pay; on several occasions, plaintiff demanded payment for the whole loan, which were left unheeded; defendant Rosario assured plaintiff that she would pay her loan as soon as she sells a couple of her real estate properties located in Bulacan; on the first week of May 2007, plaintiff again demanded payment for the whole loan from defendant Rosario; to plaintiff's shock, however, she replied that she had already paid her financial obligation and owes nothing to him; on 20 May 2007, plaintiff through counsel, sent a demand letter dated 18 May 2007 informing defendant Rosario to immediately settle her obligations, which she received on the same day, to which she did not respond; plaintiff inquired on the status of ownership over defendant Rosario's residential house ("subject property," for brevity) with the Quezon City Assessor's Office and Register of Deeds for fear that she might have already transferred the same to a third person to defraud her creditors; he discovered that on 03 March 2005, defendant Rosario transferred the subject property to her daughter, defendant Roselle, by way of gratuitous title; an Extrajudicial Settlement of Estate with Waiver of Rights dated 03 March 2002 was executed; however, plaintiff discovered that the Deed of Extrajudicial Settlement of Estate of Leoncio Caranay with waiver of rights was not notarized by a commissioned notary public; upon verification from the Office of the Clerk of Court of Caloocan City, plaintiff learned that Atty. Buenaventura Medina, Jr. who notarized the said Deed on 03 March 2005 was not commissioned by the Regional Trial Court of Caloocan City to notarize documents for the years 2005-2007; there were no copies of the said Deed found in its files and records; thus, the said Deed never became a public document; the Office of the Clerk of Court of the RTC of Caloocan City issued a certificate stating that Atty. Buenaventura Medina, Jr. is not a commissioned notary public officer of the RTC of Caloocan City; defendant Rosario's acts were calculated to defraud creditors so that the subject property would not be the object of an attachment or an execution; and the transfer that defendant Rosario made to her daughter defendant Roselle was null and void.

It was further averred that: from the time that plaintiff made a demand upon defendant Rosario for the latter to pay her debt, she continuously refused to pay the same; defendant Rosario's obligation became due on February 2002; despite demands, defendant Rosario failed to settle her financial obligation to the plaintiff; defendant Rosario should be ordered to pay the plaintiff the amount of Php3,000,000.00 as payment for the whole loan and legal interest from February 2002 until the full amount is paid; and defendant QC RD should be ordered to reconvey TCT No. 279991 to defendant Rosario because the said transfer was null and void and defendant Roselle merely holds in trust the subject property in her mother's favor. Plaintiff further stated his allegations in support of his prayer for a writ of preliminary attachment. It was prayed that, pending the hearing of the case, a writ of attachment be immediately issued, ordering the sheriff to attach the subject property covered by TCT No. 279991 registered with the QC RD under the name of defendant Roselle, to serve as security for the satisfaction of any judgment that may be awarded. It was also prayed that, after due hearing, judgment be rendered: declaring the Deed of Extrajudicial Settlement of Estate of Leoncio Caranay with Waiver of Rights dated 03 March 2005 as a Deed of Donation, which is null and void; and that defendant Roselle merely holds in trust the subject property covered by TCT No. 279991 for defendant Rosario and the conveyance made be declared null and void. It was further prayed that an Order be issued directing the defendant QC RD to reconvey TCT No. 279991 to defendant Rosario; and defendant Rosario be ordered to pay the plaintiff moral and exemplary damages, attorney's fees and litigation expenses.

Individual defendants filed their Comment/Opposition etc.[18] dated 23 January 2008 praying that the Motion for Leave to File and to Admit be denied and the Amended Complaint be not admitted. In an Order[19] dated 05 February 2008, the Motion for Leave to File and to Admit was granted and the Amended Complaint was admitted.

On 22 February 2008, individual defendants filed an Amended Answer with Counterclaim.[20] It was denied, inter alia, that: defendant Rosario is engaged in the business of buying and selling real estate properties using her own personal funds; plaintiff and defendants have been neighbors for more than fifteen (15) years; and defendant Rosario was considered as a member of plaintiff's own family. It was admitted, inter alia, that: they reside in the same subdivision but not neighbors in its literal meaning because it can be gleaned from the (Amended) Complaint that both parties reside along different streets; they admit that checks have been issued; and the subject property was transferred from defendant Rosario to defendant Roselle.

By way of special and affirmative defenses, defendants alleged, inter alia, that: the controversy started when defendant Rosario met Corazon Mejia ("Mejia," for brevity) and Erle Gidaya ("Gidaya," for brevity) way back in 1994 when both were engaged in providing supplies to Camp Crame and Camp Aguinaldo; later on, Mejia informed defendant Rosario that they have an approved ten-year purchase order of military supplies from Camp Crame and Camp Aguinaldo; defendant Rosario was asked to solicit investors who would be paid six (6) percent interest per month on their investment by Mejia and Gidaya; defendant Rosario invested on the said business; when defendant Rosario informed plaintiff and his spouse of the opportunity to invest with Mejia and Gidaya, plaintiff and his spouse were so eager to join and even agreed to only receive four (4) percent interest per month on the investment and give two (2) percent to defendant Rosario as her commission; defendant Rosario did not borrow the amount of Php3,000,000.00 to finance a real estate project because it is hard to believe that a real estate broker like her would develop a certain project with the amount being claimed; defendant Rosario merely acted as intermediary between plaintiff and the real borrowers Mejia and Gidaya; she turned over plaintiff's invested funds to Mejia and Gidaya and defendant Rosario did not use nor appropriate to herself the money being falsely claimed by plaintiff; the transaction between plaintiff and defendant Rosario is not in the nature of a debtor and creditor relationship but that of an investor and broker; and plaintiff voluntarily invested the amount with Mejia and Gidaya.

It was further alleged that: the amount of Php3,000,000.00 as reflected by the checks is not the actual amount because the investment started in the amount of Php50,000.00, then sometimes plaintiff invested Php100,000.00 on a staggered basis; plaintiff included in his computation the interest income of the money previously invested until it reached the amount of Php3,000,000.00; plaintiff and his spouse requested defendant Rosario to issue postdated checks as a guaranty which are not to be deposited since plaintiff and his spouse do not want to accept checks of Gidaya and Mejia; the checks were merely guaranty checks and not for the payment of any contractual obligations with plaintiff; the fact that the said checks became stale and were never deposited proves that defendant Rosario's allegations are true; the controversy came when the payment supposedly to be collected from Camp Crame and Camp Aguinaldo became pending and withheld; Mejia informed defendant Rosario that the interest income of the investors cannot be paid; defendant Rosario informed plaintiff that Mejia and Gidaya could not pay the interest any longer; by reason of the non-payment of the interest income by Mejia and Gidaya, plaintiff demanded payment from defendant Rosario; mainly to buy peace, defendant Rosario was forced to make substantial payments to plaintiff prior to her departure for the USA; defendant Rosario sued Gidaya and Mejia for the advances that she made to plaintiff; her payment consists principally of ceding her rights and ownership over the condominium unit at BSA Twin Towers, Bank Drive, Ortigas Center; defendant Rosario wrote a letter to the Senior Vice President of the realty company concerned to transfer her rights in the name of her daughter defendant Roselle; on 18 April 1997, a Deed of Assignment of Contract to Sell Rights was executed by defendant Roselle in favor of plaintiff's nominated transferee, their daughter Stephanie Gonzales; defendant Rosario went to the USA not for purposes of avoiding an alleged obligation but to be with her only child who just gave birth; plaintiff is not being truthful when he deliberately omitted the fact that defendant Rosario conveyed the equity on the condominium unit in the amount of Php1,738,827.64; justice and equity demands that they should have deducted this amount from their uncollected claim from Gidaya and Mejia; and plaintiff cannot even present a written contract to prove his claim and all he can present are stale checks issued not in payment of an obligation but rather as mere guaranty.

It was also averred that: TCT No. 279991 in the name of defendant Roselle cannot be questioned in an ordinary civil action such as sum of money because such action is in the nature of a collateral attack against a certificate of title brought under the operation of the Torrens System; there was no bad faith in the transfer of the property to defendant Roselle because the act of transfer was done long before the filing of this case; considering that defendant Roselle is her only child, defendant Rosario transferred the subject property to her as a gift for her wedding on 07 May 2005; it is in derogation of the law and jurisprudence if the plaintiff will be allowed to rescind the Extra-Judicial Settlement of Estate of the late Leoncio Caranay; defendant Roselle was dragged into this case only because, as the only heir, the subject property is now under her name; there was no evidence that defendant Rosario received the letter dated 18 May 2007; without demand, there can be no default; and the case should be dismissed. Defendants counterclaimed for damages, attorney's fees and litigation expenses.

On 23 April 2008, the case was referred to the Philippine Mediation Center for mediation.[21] Per Mediator's Reports dated 02 May 2008[22] and 02 June 2008,[23] the mediation was unsuccessful.

Individual defendants filed a Manifestation[24] dated 06 June 2008 that they are adopting the Pre-trial Brief that was filed on 03 January 2008. A Pre-Trial Order[25] dated 18 July 2008 was issued. Plaintiff filed a Motion [For Correction of Pre-Trial Order][26] dated 21 August 2008. In an Order[27] dated 03 December 2008, the Pre-Trial Order was amended and the corrections prayed for were entered.

Trial ensued.

Plaintiff presented Manuel Gonzales,[28] Yolanda Gonzales[29] and Brenda Coronado,[30] as witnesses. On 24 September 2010, plaintiff filed a Motion to Admit[31] with attached Formal Offer of Evidence.[32] Individual

defendants filed their Comment/Opposition etc.[33] dated 04 October 2010. In an Order[34] dated 13 December 2010, plaintiff's Formal Offer of Exhibits was admitted.

Individual defendants presented their witnesses, namely, defendant Rosario[35] and Marcelo L. Tecson.[36] On 19 April 2013, individual defendants filed their Formal Offer of Evidence,[37] to which plaintiff filed his Comment/Objections[38] dated 03 May 2013. In an Order[39] dated 06 June 2013, Exhibits "1" to "20" with submarkings were admitted. Individual defendants filed their Memorandum[40] dated 23 September 2013.

On 09 October 2013, the trial court rendered the assailed Decision,[41] the dispositive portion of which reads:

"WHEREFORE, foregoing premises considered, the Complaint is hereby (d)ismissed. The counterclaim of defendant is likewise dismissed for insufficiency of evidence.

Consequently, the writ of attachment issued by this Court is hereby lifted.

SO ORDERED."[42]

Plaintiff filed a Motion for Reconsideration[43] dated 06 November 2013, to which defendants filed a Comment/Opposition[44] dated 03 December 2013. In the assailed Order[45] dated 16 December 2013, the trial court denied the Motion for Reconsideration for lack of merit. Plaintiff filed a Notice of Appeal[46] dated 13 January 2014, which was given due course in the Order[47] dated 16 January 2014.

Hence, the instant appeal.

## RULING

Plaintiff-appellant raises the following issues, viz:

"26. Whether the Three Million Cash lent by plaintiffs-appellants (sic) to private defendant is an investment or loan?

27. Whether the trial court erred in not ruling on the action of re-conveyance (sic) filed by plaintiffs-appellants (sic) against herein private defendants?"[48]

Plaintiff-appellant contends, inter alia, that: the preponderance of evidence established a creditor-debtor relationship between him and defendant-appellee Rosario; he was able to discredit defendants-appellees' witnesses and the latter's evidence failed to directly prove that the said transaction was an investment; the testimony of Marcelo Tecson only proves the purported transaction between defendant-appellee Rosario, Mejia and Gidaya but it does not prove that the transaction between plaintiff-appellant and defendant-appellee Rosario was an investment or a loan because Tecson never had personal knowledge of the said transaction; the checks on record prove that defendant-appellee Rosario obtained Php3,000,000.00 from them; a check constitutes as evidence of indebtedness; defendant-appellee Rosario is estopped from denying the loan since she had consistently paid interest to plaintiff-appellant; he is entitled to damages and payment of interest; and the trial court committed reversible error in not ruling on the action for reconveyance filed by plaintiff-appellant despite overwhelming evidence.

Defendants-appellees riposte, inter alia, that: plaintiff-appellant filed a case against them despite knowing that defendant-appellee Rosario is not obligated to pay because the amount being claimed arises from an investment and not a loan; defendant-appellee Rosario is not liable because she is just an intermediary and she was just forced to pay plaintiff-appellant to buy peace, avoid harassment and public humiliation in the hands of plaintiff-appellant; the sixteen (16) checks shows the staggered investment made by plaintiff-appellant; the testimony of Tecson shows that Gidaya and Mejia exist and that the investment transaction is true; there is no

written contract stating that defendants-appellees are obligated to pay the amount of three percent (3%) per month; as between the parties, it is the defendants-appellees who are entitled to damages and attorney's fees; and the trial court did not err in not ruling on plaintiff-appellant's prayer for reconveyance because it is a collateral attack on the title which the law forbids.

The appeal is bereft of merit.

Stripped of verbiage, the primordial issue in the instant case is whether or not the trial court committed reversible error in dismissing the Complaint and lifting the writ of attachment.

We find in the negative.

In civil cases, courts must determine if the plaintiff was able to prove his case by a preponderance of evidence which is defined as '... the probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.'[49] In the present case, plaintiff-appellant failed to discharge his burden.

Plaintiff-appellant claims that sometime in 1995, defendant-appellee Rosario approached and asked his wife for a loan in the amount of Php3,000,000.00 with a promise that she would pay them back after selling her property in San Jose Del Monte, Bulacan and that in the meantime, she would pay them three percent (3%) interest per month. He and his wife agreed to loan the said amount to defendant-appellee Rosario with the stipulation that the latter would issue a check in the same amount and that the loan would earn interest per month. To cover the amount of the loan, defendant-appellee Rosario issued fourteen (14) postdated checks[50] with various dates (Exhibits "A" to "I" and "L" to "P") in favor of plaintiff-appellant and two (2) postdated checks[51] dated 01 and 05 March 1996 (Exhibits "J" to "K") in favor of plaintiff-appellant's daughter Stephanie Gonzales. Defendant-appellee Rosario paid the monthly interest in the amount of Php90,000.00 from September 1995 to January 2002. Thereafter, defendant-appellee Rosario stopped paying the monthly interest. Plaintiff-appellant made demands on defendant-appellee Rosario to pay the whole loan, to no avail. He even solicited the help of his friend Atty. Tupaz to ask, on his behalf, that defendant-appellee Rosario pay her loan. He was surprised to learn that defendant-appellee Rosario told Atty. Tupaz that she does not owe him anything. Thus, plaintiff-appellant secured the services of a counsel and sent a final demand letter[52] dated 18 May 2007 (Exhibit "Q") demanding defendant-appellee Rosario to pay her outstanding obligation. The refusal of defendant-appellee Rosario to settle her alleged obligation constrained plaintiff-appellant to file a Complaint against the former.[53]

However, defendant-appellee Rosario denied that she borrowed Php3,000,00.00 from plaintiff-appellant.[54] She testified that: she met Mejia and Gidaya way back in 1994; Mejia and Gidaya visited her at home and invited her to solicit investors who are interested in financing their business; Mejia and Gidaya would give a monthly 6% interest of the amount invested to any investor who would be willing to lend or finance their business; she was told that Mejia and Gidaya have an approved ten-year purchase order of military supplies from Camp Crame and Camp Aguinaldo; she acted as the intermediary between plaintiff-appellant as the investor, and Mejia and Gidaya as the borrowers; the investor gives her 2% while the 4% goes to the investor; one morning, while jogging, she mentioned to plaintiff-appellant and his wife about the investment opportunity in the business of Mejia and Gidaya; plaintiff-appellant and his wife were so eager to finance the business of Mejia and Gidaya and agreed to give her 2% as her commission; plaintiff-appellant made an initial investment of Php50,000.00 which was brought to her house, and after deducting the interest income and her commission, borrower Mejia will pick up the money given by plaintiff Gonzales; when Mejia and Gidaya needed additional funding, they called her to ask if plaintiff-appellant would like to increase his investment; plaintiff-appellant made additional investments in a staggered basis;[55] the total amount that plaintiff-appellant invested with Mejia and Gidaya was

Php3,000,000.00;[56] for the first six (6) investments of plaintiff-appellant and when his investment amounted to Php800,000.00, he requested for security checks; when plaintiff-appellant requested her to issue postdated checks, she called up the borrower; the borrower issued postdated checks in favor of the plaintiff-appellant but he refused to accept the same because he would like her to issue the said checks; at first she refused to issue checks but because they are friends and she is earning 2% from the transaction, she gave in to the request; she issued postdated checks with the arrangement that it would not be deposited because it is just guaranty checks; for her protection, she asked the borrower to also issue to her postdated checks and Gidaya issued to her a check; when the check[57] (Exhibit “2”) issued by Gidaya in the amount of Php2,500,000.00 bounced, she sued Gidaya and an Information[58] dated 18 November 1998 (Exhibit “1”) for violation of Batas Pambansa Blg. 22 was filed against the latter; Gidaya kept on hiding while Mejia went to America, that is why the case was archived per Order[59] dated 10 April 2000 (Exhibit “9”) by the Metropolitan Trial Court of Metro Manila, Branch 42, Quezon City; and when the business of Gidaya and Mejia failed, plaintiff-appellant and his wife ran after her.[60]

Marcelo Tecson corroborated defendant-appellee Rosario's testimony that the latter merely solicited investment funds to be used by Gidaya in his business.[61] He testified, inter alia, that: sometime in January 1995, Gidaya and Mejia went to his house and explained to him that they have a business for which they need investment funds; he was told that Gidaya won in a public bidding for the supply of guns and ammunition in the military and he has a purchase order that needs a large capital; according to Gidaya, they would pay a monthly interest of at least 3% on the invested funds; he was told that defendant-appellee Rosario was soliciting funds for them; for the first transaction, he made an initial investment of Php1,000,000.00 and he got the interest income thereon; after that, they solicited for more funds and then there were subsequent transactions; he simply invested money which would earn interest until the amount would grow to a total of Php10,700,000.00 by 01 February 1997; he was given a guaranty check in the amount of Php10,700,000.00 by Gidaya which bounced as the account was already closed; he tried to communicate with Gidaya and tried to collect but he was unsuccessful, so he sued Gidaya for estafa; he pursued the case but it was archived because Gidaya cannot be located; and defendant-appellee Rosario was telling the truth, when she said that she solicited investment funds from some sources to be used by Gidaya in his business, because that is the same situation in his case as he also invested funds with Gidaya.[62]

As correctly found by the trial court, defendant-appellee was able to explain more than sufficiently that the transaction entered into by plaintiff-appellant was an investment and that defendant-appellee merely acted as an intermediary.[63] It was pointed out by the trial court that “xxx defendant's evidence consisting of her testimony and Mr. Marcelo Tecson is more convincing to this Court as worthy of belief than that which is offered by the plaintiff in opposition thereto. Simply, the story of defendant supported by that of Mr. Tecson harnessed an honest and dependable version of the real agreement between the parties.”[64] There is no compelling reason to disturb the same. '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.’[65]

Moreover, it behooves upon plaintiff-appellant to prove his claim. It is a settled rule that, as in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. xxx Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[66] The party, whether the plaintiff or the defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to

obtain a favorable judgment, subject to the overriding rule that the burden to prove his cause of action never leaves the plaintiff.[67]

In this case, plaintiff-appellant presented as evidence 16 postdated checks[68] with various dates (Exhibits “A” to “P”) to prove that defendant-appellee Rosario issued checks to him and to his daughter Stephanie Gonzales for defendant-appellee's alleged outstanding financial obligation. He claims that the checks constitute as evidence of the Php3,000,000.00 indebtedness of defendant-appellee Rosario.

We are not persuaded.

(It has been) expressly recognized that a check 'constitutes an evidence of indebtedness' and is a veritable 'proof of an obligation.'[69] However, a careful perusal of the 16 postdated checks[70] (Exhibits “A” to “P”) bearing the dates 09, 15, 24 September 1995; 03, 04, 20 October 1995; 09 November 1995; 11 December 1995; 07 January 1996; and 01, 05, 07, 13, 20, 22, 24 March 1996 – shows that all of them were never deposited, as admitted by plaintiff-appellant.[71]

It bears emphasis that the 16 postdated checks which were issued in the years 1995 and 1996 have long become stale. A stale check is one which has not been presented for payment within a reasonable time after its issue; it is valueless and, therefore, should not be paid.[72] According to current banking practice, the reasonable period within which to present a check to the drawee bank is six months. Thereafter, the check becomes stale and the drawer is discharged from liability thereon to the extent of the loss caused by the delay.[73] As admitted by plaintiff-appellant himself, other than the checks issued by defendant-appellee Rosario, there was no other document that would prove the alleged loan.[74]

Moreover, as aptly found by the trial court, a wide range of evidence supports the claim of defendants-appellees that the transaction between plaintiff-appellant and defendant-appellee Rosario is one of investment and not a loan, viz:

“First, looking into the security checks which were supposedly issued to secure the loan, plaintiff insists that the same were issued simultaneously with the release of the loan. In rebuttal, however, defendant claims that the security checks were issued on different dates, at least six (6) times, corresponding to the number of times that plaintiff made an investment.

This Court observed, similar to the observation made by the defendant, that the security checks were not successively numbered as opposed to the standard practice of issuing checks. Consequently, it could reasonably be inferred that these checks were actually issued on different occasions and not at the same time. It shows therefore that the testimony of the defendant is more in tune with the truth. This observation adds to the reliability of defendant's claim and diminishes that of the plaintiff's.

Second, and more important, defendant's evidence consisting of her testimony and Mr. Marcelo Tecson is more convincing to this Court as worthy of belief than that which is offered by the plaintiff in opposition thereto. Simply, the story of defendant supported by that of Mr. Tecson harnessed an honest and dependable version of the real agreement between the parties.

Moreover, their testimonies were supported with documentary evidence that could only bolster defendant's claim and corollarily, weaken the claim of the plaintiff. In her testimony, defendant consistently stressed that the transaction was an investment with Gidaya and Mejia to whom plaintiff's money was given. She also stressed that she merely acted as an intermediary. A strong evidence of corroborative value were the documents presented by the defendant which showed that she sued Erle Gidaya, such as: certified true copy of the information, the complaint affidavit and the subject check, which the latter issued as 'back to back guaranty'. These documents most certainly tilt the scale heavily on the side of the defendants. It clearly substantiated defendant's claim that the transaction between her and plaintiff was an investment and that she

was just acting as an intermediary, and that the real beneficiaries and principals were Gidaya and Mejia.

In addition, the testimony of Mr. Tecson supports defendant's story, for he was also an investor with the same predicament as plaintiff. It is noteworthy that Mr. Tecson likewise sued Erle Gidaya.

This Court thus finds the transaction between plaintiff and defendant to be one of investment and not a loan. And since defendant acted merely as an intermediary, plaintiff's action should have been directed against Gidaya and Mejia, the beneficiary of the investment scheme.”[75]

It is settled that the appellate court will not disturb the factual findings of the lower court unless there is a showing that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. Indeed, the trial court's findings are always presumed correct.[76] In the instant case, We find no cogent reason to disturb the findings of the trial court. Plaintiff-appellant was unable to prove, by preponderance of evidence, that defendant-appellee Rosario contracted a loan from him in the amount of Php3,000,000.00.

Considering the foregoing disquisition, We find no necessity to pass upon the other matters raised by plaintiff-appellant.

A final note.

Just a reminder to petitioner, who charges interest at the rate of 3% per month in his financing activities. (A)t present, usury has been legally non-existent in view of the suspension of the Usury Law[77] by Central Bank Circular No. 905 s. 1982. Even so, not all interest rates levied upon loans are permitted by the courts xxx.[78] While the Court recognizes the right of the parties to enter into contracts and who are expected to comply with their terms and obligations, this rule is not absolute. Stipulated interest rates are illegal if they are unconscionable xxx.[79] Time and again, it has been ruled in a plethora of cases that stipulated interest rates of 3% per month and higher, are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law.[80]

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 09 October 2013 and Order dated 16 December 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 91, Quezon City in Civil Case No. Q-07-60977 are AFFIRMED. Costs against plaintiff-appellant.

### **SO ORDERED.**

Lazaro-Javier, and Sadang, JJ., concur.

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[1] Record, pp. 493-500; penned by Hon. Lita S. Tolentino-Genilo

[2] Id. at 517

[3] Rollo, pp. 20-30

[4] Id. at 42-104

[5] Id. at 106 (dorsal side)

[6] Id. at 106 (ventral side)

[7] Record, pp. 2-12

[8] TSN, 05 September 2007, pp. 2-9

[9] Record, p. 42

[10] Id. at 43-51

[11] Id. at 93

[12] Id. at 95-96

[13] Id. at 97

[14] Id. at 103-121

[15] Id. at 126-131

[16] Id. at 133-135

[17] Id. at 136-146

[18] Id. at 174-176

[19] Id. at 179

[20] Id. at 180-198

[21] Id. at 226

[22] Id. at 227

[23] Id. at 231

[24] Id. at 237-238

[25] Id. at 244-245

[26] Id. at 246-248

[27] Id. at 299-300

[28] TSNs, 03 April 2007, pp. 3-38; 05 November 2008, pp. 3-41; 15 December 2008, pp. 3-17; 15 May 2009, pp. 4-13; 26 August 2009, pp. 3-21

[29] TSNs, 10 February 2010, pp. 3-60; 16 April 2010, pp. 3-47; 23 April 2010, pp. 3-17

[30] TSN, 04 August 2010, pp. 3-11

[31] Record, pp. 278-279

[32] Id. at 280-288

[33] Id. at 318-320

[34] Id. at 331

[35] TSNs, 08 April 2011, pp. 3-47; 25 May 2011, pp. 2-33; 29 June 2011, pp. 2-25; 30 September 2011, pp. 3-29; 25 November 2011, pp. 3-6

[36] TSNs, 01 June 2012, pp. 3-17; 03 August 2012, pp. 5-20; 03 October 2012, pp. 4-9

[37] Record, pp. 369-381

[38] Id. at 422-426

[39] Id. at 427

[40] Id. at 442-492

[41] Id. at 493-500

[42] Id. at 500

[43] Id. at 501-508

[44] Id. at 511-516

[45] Id. at 517

[46] Id. at 519-520

[47] Id. at 521

[48] Rollo, p. 23

[49] Lourdes Suites (Crown Hotel Management Corporation) v. Noemi Binarao, G.R. No. 204729, 06 August 2014

[50] Record, pp. 301-309, 312-316

[51] Id. at 310-311

[52] Id. at 289

[53] TSNs, 05 September 2007, p. 7; 05 November 2008, pp. 12, 14, 24-26

[54] Record, p. 181

[55] TSN, 08 April 2011, pp. 9-21, 26-27

[56] TSN, 25 May 2011, p. 8

[57] Record, p. 383

[58] Id. at 382

[59] Id. at 390

[60] TSN, 08 April 2011, pp. 30, 32-37, 40, 44

[61] TSN, 01 June 2012, p. 16

[62] Id. at 6-16

[63] Record, p. 497

[64] Id. at 498

[65] Spouses William Guidangen and Mary Guidangen v. Devota B. Wooden, G.R. No. 174445, 15 February 2012

[66] Cf. Banco De Oro Unibank, Inc. v. Spouses Enrique Gabriel Locsin and Ma. Geraldine R. Locsin, G.R. No. 190445, 23 July 2014

- [67] Cf. Philippine Commercial International Bank v. Antonio B. Balmaceda and Rolando N. Ramos, G.R. No. 158143, 21 September 2011
- [68] Record, pp. 301-316
- [69] Cf. Ting Ting Pua v. Spouses Benito Lo Bun Tiong and Caroline Siok Ching Teng, G.R. No. 198660, 23 October 2013, citing Pacheco v. Court of Appeals, 377 Phil. 627 (1999)
- [70] Record, pp. 301-316
- [71] TSN, 05 November 2008, p. 20
- [72] Juan Trajano a.k.a. Johnny Trajano v. Uniwide Sales Warehouse Club, G.R. No. 190253, 11 June 2014
- [73] Pacifico B. Arceo, Jr. v. People of the Philippines, G.R. No. 142641, 17 July 2006
- [74] TSN, 05 September 2007, p. 6
- [75] Record, pp. 498-499
- [76] Cf. Metropolitan Fabrics, Inc. and Enrique Ang v. Prosperity Credit Resources, Inc., et al., G.R. No. 154390, 17 March 2014
- [77] Act No. 2655, as amended by Presidential Decree 116
- [78] Rolando C. De La Paz v. L & J Development Company, G.R. No. 183360, 08 September 2014
- [79] Id., citing Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation, 523 Phil. 360, 366 (2006)
- [80] Rolando C. De La Paz v. L & J Development Company, *supra*

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