

**SOLID GOLD INTERNATIONAL TRADERS, INCORPORATED,
PLAINTIFF-APPELLEE, VS. LOLITA S. SANTOS,
DEFENDANT-APPELLANT.**

Ponente: BATO, JR., J.

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BATO, JR., J.

This is an appeal from the Decision of the Regional Trial Court of Pasig City, Branch 166, in Civil Case No. 60931 for Sum of Money with Prayer for Preliminary Attachment, the dispositive portion of which reads as follows:

“WHEREFORE judgment is hereby rendered ordering defendant to pay plaintiff, as follows:

1. P2,549,019.74, plus interest and late payment charge at the rate stipulated upon in the promissory notes (Exhs. “B” and “C”); 2.
2. P541,800.00, plus interest at the legal rate from June 14, 1991, until said amount is fully paid;
3. The sum equivalent to 25% of the total amount due as attorney’s fees and liquidated damages; and,
4. Costs of suit.

SO ORDERED.”[1]

The facts of the case are as follows:

Defendant-appellant secured loans from plaintiff-appellee corporation evidenced by two promissory notes dated March 15, 1990 and April 11, 1990. In both loans, defendant-appellant agreed to pay interest at the rate of sixty percent (60%) per annum; late payment charges equivalent to twenty-four percent (24%) per annum on such installment from due date until paid; the same rate of interest applied to the principal on unpaid interest; twenty-five percent (25%) of the total sum due as attorney’s fees in case of court action; and twenty-five percent (25%) of the total sum due as liquidated damages.

Defendant-appellant’s March 15, 1990 loan was for five hundred thousand pesos (P500,000.00) payable in four consecutive monthly installments in accordance with the following amortization schedule:

DATE AMOUNT

April 15, 1990 P151,315.78

May 15, 1990 P144,736.84

June 15, 1990 P138,157.89

July 15, 1990 P131,578.94

P565,789.45

Defendant-appellant's April 11, 1990 loan on the other hand was for one million five hundred thousand pesos (P1,500,000.00) payable in two monthly consecutive installments in accordance with the following amortization schedule:

DATE AMOUNT

May 11, 1990 P 78,947.00

June 11, 1990 P1,578,947.00

P1,657,894.00

In its complaint dated June 5, 1991, plaintiff-appellee alleged that except for the amortizations due on April 15, May 15 and June 15, 1990, defendant-appellant failed to pay the remaining amortizations amounting to two million five hundred forty-nine thousand nineteen pesos and seventy-four centavos (P2,549,019.74) as of February 15, 1991. This was plaintiff-appellee's first cause of action.

As its second cause of action, plaintiff-appellee alleged that defendant-appellant purchased from it pieces of jewelry which began sometime in 1986 and in the process left an outstanding balance in the total amount of two million four hundred sixty-four thousand five hundred ninety-two pesos (P2,464,592.00). In 1989, upon defendant-appellant's request, plaintiff-appellee agreed that defendant-appellant amortize within the period of August 15, 1989 to June 15, 1990, with a five percent (5%) monthly interest, her balance on the pieces of jewelry that she got. But defendant-appellant failed to pay any amortization as agreed upon. Instead, defendant-appellant returned to plaintiff-appellee two pieces of jewelry on May 7, 1990 and November 15, 1990 valued at one million one hundred nine thousand pesos (P1,109,000.00). Despite repeated demands, defendant-appellant failed to pay the pieces of jewelry that she got to the damage of the plaintiff-appellee in the amount of two million two hundred ninety-nine thousand three hundred nine pesos and fifty-seven centavos (P2,299,309.57) as of February 15, 1991.

In support of its third cause of action, plaintiff-appellee alleged that defendant-appellant invested in the corporation in the form of credit accommodations through peso exchange for dollar checks deposited with it which, as of October 11, 1989, already amounted to six million eighty-eight thousand seventy-four pesos and seventy-two centavos (P6,088,074.72). Pursuant to their arrangement, defendant-appellant was able to advance the peso equivalent of the dollar deposit that she made and was able to secure credit accommodations from plaintiff-appellee duly covered by promissory notes which exceeded the value of her dollars at the exchange rate then prevailing to the extent of one million one hundred fifty-six thousand four hundred sixty pesos and nineteen centavos (P1,156,460.19). Plaintiff-appellee notified defendant-appellant that there was an overdraft in the amount of P1,156,460.19 as of February 15, 1991 exclusive of interest from May 7, 1990, but the latter failed to pay the aforesaid amount.

In sum, plaintiff-appellee claimed that defendant-appellant owes it the sum of six million four thousand seven hundred eighty-nine pesos and fifty centavos (P6,004,789.50). Plaintiff-appellee further alleged in its complaint that defendant-appellant, by way of conforming to its computation regarding her accountability, issued Equitable Banking Check No. 45913897 dated February 15, 1991 in the amount of P6,004,789.50. On May 6, 1991, plaintiff-appellee through counsel sent a demand letter to defendant-appellant reminding her of her accountability and at the same time informing her that her check will be deposited immediately. On May 28, 1991, when plaintiff-appellee presented the said check for payment, it was dishonored because defendant-appellant's account was already closed.

Thus, plaintiff-appellee prayed that the defendant-appellant be ordered to pay the amount of P6,004,789.50 as her principal obligation; 12% interest from date of default; 25% of the outstanding obligation as attorney's fees; P500,000.00 as liquidated damages; and cost of suit.

In her answer, defendant-appellant denied that she has unpaid obligations with plaintiff-appellee. On the contrary, defendant-appellant asserted that she invested in plaintiff-appellee in the amount of eight million eight hundred twenty-four thousand one hundred forty-eight pesos and fifteen centavos (P8,824,148.15) as evidenced by a Certification[2] dated May 10, 1990 and issued by Abraham I. Novales, Chairman of plaintiff-appellee corporation. Defendant-appellant further alleged that she has fully paid her obligation under the promissory note dated March 15, 1990 in accordance with the amortization schedule – her final payment having been made through Equitable Banking Corporation Check No. 45864888 dated July 15, 1990 in the amount of P131,578.94. Defendant-appellant likewise alleged that she issued Equitable Banking Corporation Check No. 45864924 dated June 11, 1990 in the amount of P1,578,947.00, representing her obligation under the promissory note dated April 11, 1990. But prior to the due date, plaintiff-appellee granted defendant-appellant's request that she be given an extension up to August 26, 1990 within which to settle her obligation. Thus, defendant-appellant caused to be delivered to plaintiff-appellee a blank check, i.e., Equitable Banking Corporation Check No. 45913897, to replace Check No. 45864924. Defendant-appellant asserted that she did not authorize anybody to fill up Check No. 45913897 with the value of P6,004,789.50 as no such obligation was incurred by her in favor of the plaintiff-appellee.

By way of counterclaim, defendant-appellant prayed that plaintiff-appellee be ordered to render an accounting on her investments therewith; to pay moral damages in an amount not less than P5,000.00; attorney's fees and expenses of litigation in the sum of P500,000.00; exemplary damages in the amount of P100,000.00; and to pay the costs of suit.

On June 16, 1999, the trial court promulgated the assailed Decision in favor of the plaintiff-appellee corporation.

Obviously dissatisfied, defendant-appellant filed this appeal based on the following assignment of errors, to wit:

"I. THE COURT A QUO ERRED IN FINDING THAT PLAINTIFF-APPELLEE IS ENTITLED TO COLLECT FROM DEFENDANT-APPELLANT THE AMOUNT OF P2,549,019.74, INCLUDING DISCOUNTED INTEREST CHARGES, AS OF 15 FEBRUARY 1991 FOR THE LOANS OBTAINED BY HER.

II. THE COURT A QUO ERRED IN FINDING THAT PLAINTIFF-APPELLEE IS ENTITLED TO COLLECT FROM DEFENDANT-APPELLANT THE AMOUNT OF P541,800.00 FOR THE JEWELRY RECEIVED BY HER ON CONSIGNMENT, PLUS INTEREST AT THE LEGAL RATE FROM 14 JUNE 1991 UNTIL FULLY PAID.

III. THE COURT A QUO ERRED IN DISMISSING DEFENDANT-APPELLANT'S DEMAND FOR AN ACCOUNTING OF HER U.S. CURRENCY INVESTMENT WITH PLAINTIFF-APPELLEE.

IV. THE COURT A QUO ERRED IN NOT CONSIDERING DEFENDANT-APPELLANT'S COUNTERCLAIMS FOR THE DAMAGES SUFFERED BY HER.

V. AND THE COURT A QUO ERRED IN ORDERING THE DEFENDANT-APPELLANT TO PAY ATTORNEY'S FEES AND LIQUIDATED DAMAGES, AS WELL AS THE COSTS OF SUIT." [3]

No appellee's brief was filed by the plaintiff.

In support of her first assigned error, defendant-appellant asserts that she has fully paid the March 15, 1990 promissory note in accordance with the amortization schedule. She claims that Equitable Banking Corporation

Check No. 45864888 in the amount of P131,578.94 evidences her last payment. Thus, defendant-appellant posits that it was incumbent upon plaintiff-appellee to encash the said check on its due date and failure to do so has the effect of payment.

We find no merit in defendant-appellant's assertions. In *Jimenez vs. NLRC*,^[4] it was held that where a defendant sued for a debt admits that the debt was originally owed, and pleads payment in whole or in part, it is incumbent upon him to prove such payment.^[5] That a plaintiff admits that some payments have been made does not change the burden of proof.^[6] The defendant still has the burden of establishing payments beyond those admitted by plaintiff.^[7] In the case at bench, defendant-appellant failed to discharge her burden of proving payment. Article 1249 of the Civil Code provides that the delivery of mercantile documents including checks "shall produce the effect of payment only when they have been cashed". In this case, it was not shown that the checks were encashed by the petitioners. Nor did defendant-appellant give any reason why we should rule that the check has already been impaired through plaintiff-appellee's fault. Hence, the trial court's finding that defendant-appellant failed to pay the last amortization of her March 15, 1990 promissory note amounting to P131,578.94 must be upheld.

Going now to the April 11, 1990 promissory note in the amount of one million five hundred thousand pesos (P1,500,000.00) excluding interest and charges, which defendant-appellant asserts that she issued a blank check for it and that plaintiff-appellee fraudulently wrote the amount of P6,004,789.50. While defendant-appellant admits that she has not paid the April 11, 1990 promissory note, she nevertheless asserts that the same should have been deducted from her money with plaintiff-appellee corporation.

In ruling that the questioned certification regarding defendant-appellant's investment in plaintiff-appellee corporation is spurious, the trial court ratiocinated as follows:

"Defendant's demand for an accounting of her U.S. currency investment with plaintiff cannot be entertained because her basis is the Certification, dated May 10, 1990, issued by Abraham Novales (Exh. "1") which, according to plaintiff and believed by the court, was merely issued to accommodate the request of defendant, who had problems with her business and the IRS in Guam, for the purpose of enhancing her financial standing with creditor banks. The Court is convinced that the Certification is spurious because if it were true, as shown in the Certification, that as of May 10, 1990, defendant's investment with plaintiff amounted to P8,824,148.15, the Court is at a loss why defendant would prefer to borrow from plaintiff in March and April, 1990, the total sum of P2,000,000.00 at very exorbitant (sic) interest and surcharges (Exhs. "B" and "C"), instead of withdrawing the said amount from her investment with plaintiff, which only earned 24% interest per annum."^[8]

We do not find any reason why the above-quoted ruling of the trial court should be reversed. The questioned certification purports that defendant-appellee lent three million nine hundred twenty thousand pesos (P3,920,000.00) to plaintiff-appellee corporation with the principal and interest compounded annually thereby making its aggregate value equivalent to P8,824,148.15 as of May 10, 1990, the date of the alleged certification. If indeed defendant-appellant has money with plaintiff-appellee amounting to P8,824,148.15 as of May 10, 1990, then it runs counter to logic why defendant-appellant, in times of financial crisis, would readily agree to borrow money with interest at 60% per annum from a corporation that owes her a large sum of money. Moreover, if defendant-appellant's claim that she has money with plaintiff-appellee corporation is true, then we are bewildered why plaintiff-appellee corporation did not just avail of the remedy of compensation as provided for in Article 1278 and which defendant-appellant insists is applicable to the present case, rather than go to the lengthy process of court litigation. Such a fact supports the conclusion that defendant-appellant has no investment with plaintiff-appellee corporation. What is more, defendant-appellant cannot claim that plaintiff-appellee willfully suppressed the presentation of Abraham I. Novales, the signatory of the certification, as a witness "lest he admit the veracity of the certification". Notably, the certification is defendant-appellant's evidence. Therefore, it was

incumbent upon her to present evidence on the facts in issue necessary to establish her defense by the amount of evidence required by law.[9] It was her responsibility therefore to call Abraham I. Novales as a witness to testify on the veracity of the certification.

Regarding defendant-appellant's liability for the pieces of jewelry that she allegedly got from plaintiff-appellee, only the amount of P1,650,800 is supported by receipts, specifically exhibits "E", "F" and "G". And out of the three receipts, only exhibit "E" was signed by defendant-appellant. The rest, exhibits "F" and "G", were signed by one Lucy Tamayo. Hence, in this appeal, defendant-appellant now contends that she cannot be made liable for the consigned goods under exhibits "F" and "G" because she was not the one who signed the same.

The above contention of defendant-appellant is also unmeritorious. To begin with, defendant-appellant in her answer or in the other pleadings that she filed before the trial court never denied nor questioned the authority of Lucy Tamayo to receive the pieces of jewelry. As such, she cannot now raise for the first time in this appeal the authority or lack thereof of Lucy Tamayo to receive the pieces of jewelry on her behalf. Well-settled is the rule that questions that were not raised in the lower court cannot be raised for the first time on appeal. Besides, defendant-appellant's own evidence shows that Lucy Tamayo has authority to receive the pieces of jewelry from plaintiff-appellee, specifically Exhibit "3"[10] consisting of a handwritten receipt dated May 5, 1990 wherein plaintiff-appellee's president Elenita L. Novales allegedly received on consignment pieces of jewelry from defendant-appellant through Lucy Tamayo. Thus, the findings of the trial court must be upheld, to wit:

"From July 27, 1989 to September 29, 1989, defendant received on consignment from plaintiff several pieces of jewelry valued at P1,650,800.00, on the condition that upon demand defendant will promptly return all consigned jewelry on hand or turn over the proceeds of any sale thereof at the price agreed upon (Ehxs. "E", "F" and "G"). In May and November, 1990, defendant returned to plaintiff two (2) pieces of jewelry worth P1,109,000.00, so that defendant still owes plaintiff the amount of P541,800.00. The Court is not impressed with the stance of defendant that her obligation to plaintiff regarding the jewelry had already been satisfied with plaintiff's receipt from her, on consignment, on May 5, 1990, several pieces of jewelry, consisting of pearls, rubies, emeralds and other colored stones, not only because no corresponding price was agreed upon, but also because no demand for the return of the jewelry was made by defendant." [11]

Anent the award of attorney's fees and liquidated damages awarded by the trial court equivalent to 25% of the total amount due, the same must be modified as we nonetheless find the amount to be still excessive and unreasonable. The two promissory notes executed by the parties in the present case provide for a 25% attorney's fees of the total sum due and another 25% for liquidated damages. Such a proviso is binding between the parties so long as it does not contravene the law, morals, public order or public policy.[12] Nevertheless, the courts still have the power to reduce the attorney's fees and liquidated damages stipulated by the parties if the amounts thereof are iniquitous or unconscionable.[13] Considering that this is a simple collection case and the interest imposed on the principal amount due is manifestly high, we reduce the award of attorney's fees to three hundred thousand pesos (P300,000.00). Moreover, the award of attorney's fees in the present case is not in the nature of an indemnity but rather a penalty in the form of liquidated damages, hence, plaintiff-appellee is not entitled to a separate amount for liquidated damages.[14]

WHEREFORE, the instant appeal is DENIED and the Decision of the Regional Trial Court of Pasig City, Branch 166, in Civil Case No. 60931 is AFFIRMED with MODIFICATION, in that the award of attorney's fees is reduced to three hundred thousand pesos (P300,000.00).

SO ORDERED.

Tijam[*], and Maambong[**], JJ., concur.

[*]Acting Chairman vice J. Sabio, Jr. per Office Order No. 238-06-RTR dated September 18, 2006.

[**]Acting Senior Member vice J. Asuncion-Vicente per Office Order No. 232-06-RTR dated September 14, 2006.

[1]Records, pp. 375-379, 378-379.

[2]Exhibit “1”, p. 333.

[3]Appellant’s Brief, Rollo, pp. 7-8.

[4]256 SCRA 84 [1996].

[5]Ibid, p. 90.

[6]Ibid.

[7]Ibid.

[8]RTC Decision, Records, pp. 375-379, 378-379.

[9]Section 1, Rule 131 of the Rules of Court.

[10]Rollo, p. 335.

[11]RTC Decision, Records, pp. 375-379, 377.

[12]Trade and Investment Development vs. Roblett Industrial Construction Corporation, 474 SCRA 510, 540 [2005].

[13]Ibid.

[14]Ibid.

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