

**PHILIPPINE CHARITY SWEEPSTAKES OFFICE,
PLAINTIFF-APPELLANT, VS. CLARITA N. SISCAR, BF GENERAL
INSURANCE COMPANY, INC. AND THE IMPERIAL INSURANCE, INC.,
DEFENDANTS-APPELLEES.**

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is plaintiff-appellant's appeal from the Decision dated April 25, 2012[1] in Civil Case No. Q-98-33831 of Branch 97, Regional Trial Court (RTC), Quezon City which dismissed the complaint for sum of money "for failure of the plaintiff to prove its case by a preponderance of evidence."

THE ANTECEDENTS

On November 20, 1981, plaintiff-appellant Philippine Charity Sweepstakes Office (PCSO) and defendant-appellee Clarita N. Siscar entered into a Contract for Provincial Distributor,[2] whereby the latter was appointed as distributor/reseller in Santiago, Isabela of the former's lottery tickets. Under said contract, (i) defendant-appellee Clarita N. Siscar would earn commissions when the required quantity of lottery tickets were sold for each scheduled draw; (ii) defendant-appellee Clarita N. Siscar must pay plaintiff-appellant, within ten (10) days after each scheduled draw, the value of the lottery tickets she received from plaintiff-appellant; (iii) defendant-appellee Clarita N. Siscar would be considered in default if the lottery tickets were not paid within said period; and, (iv) in case of default, the security issued by defendant-appellee Clarita N. Siscar in favor of plaintiff-appellant shall be applied as payment for the lottery tickets without necessity of demand, subject to interest at twelve (12%) percent per annum, to be reckoned from date of default until full payment.

As security for payment of the lottery tickets, defendant-appellee Clarita N. Siscar posted surety bonds issued by defendants-appellees BF General Insurance Company, Inc. and The Imperial Insurance, Inc., to wit:

BF General Insurance Company, Inc. The Imperial Insurance, Inc.

Reference/Period Covered Amount Reference/Period Covered Amount

G(16)025576/Oct. 25, 1989-Oct. 25, 1990 P 50,000.00[3] 02299/Feb. 8, 1990-Feb. 8, 1991 P 50,000.00[4]

G(16)025577/Oct. 25, 1989-Oct. 25, 1990 50,000.00[5] 02300/Feb. 8, 1990-Feb. 8, 1991 50,000.00[6]

G(16)03740/Nov. 9, 1989-Nov. 9, 1990 50,000.00[7] 02302/Mar. 16, 1990-Mar. 16, 1991 50,000.00[8]

G(16)03741/Nov. 9, 1989-Nov. 9, 1990 50,000.00[9] 02303/Mar. 16, 1990-Mar. 16, 1991 50,000.00[10]

P200,000.00 P200,000.00

On August 18, 1992, plaintiff-appellant called[11] on the surety bond issued by defendant-appellee The Imperial Insurance, Inc. and demanded the amount of P199,818.00, representing the unpaid lottery tickets issued to defendant-appellee Clarita N. Siscar for the draws on July 15, 1990, July 29, 1990, August 5, 1990 and August 19,

1990. On September 28, 1992, plaintiff-appellant called[12] on the surety bonds issued by defendant-appellee BF General Insurance Company, Inc. and demanded the amount of P199,830.40, representing the unpaid lottery tickets issued to defendant-appellee Clarita N. Siscar for the draws on July 1, 1990, July 8, 1990, July 12, 1990 and July 22, 1990. However, said demands were ignored.

On May 13, 1996, plaintiff-appellant demanded[13] from defendant-appellee Clarita N. Siscar the amount of P1,178,214.81, representing the unpaid lottery tickets as of April 30, 1996.[14] Said amount included the amount earlier demanded from defendants-appellees BF General Insurance Company, Inc. and The Imperial Insurance, Inc. As the demand was ignored, plaintiff-appellant endorsed defendant-appellee Clarita N. Siscar's account to the Office of the Government Corporate Counsel (OGCC). Thus, on September 16, 1996, the OGCC, in behalf of plaintiff-appellant, demanded[15] from defendant-appellee Clarita N. Siscar the amount of P1,178,214.81.

On October 1, 1996, the OGCC received a letter from defendant-appellee Clarita N. Siscar requesting that she be given a period of thirty (30) days within which to verify her accountability with plaintiff-appellant.[16] Upon receipt of said letter, the OGCC informed defendant-appellee Clarita N. Siscar that plaintiff-appellant would defer court action until October 31, 1996.[17]

In a letter dated October 22, 1996, defendant-appellee Clarita N. Siscar proposed to pay the unpaid lottery tickets beginning December 1, 1996 at P5,000.00 per month for the first five (5) years and thereafter, at P8,000.00 per month.[18] There is no showing that plaintiff-appellant responded to the proposal or that defendant-appellee Clarita N. Siscar complied with the same.

On March 16, 1998, plaintiff-appellant filed with Branch 78, RTC, Quezon City a Complaint[19] for sum of money against defendant-appellee Clarita N. Siscar and her sureties, defendants-appellees BF General Insurance Company, Inc. and The Imperial Insurance, Inc., praying that (i) defendant-appellee Clarita N. Siscar be ordered to pay the amount of P1,178,214.81 plus interest at twelve (12%) percent per annum from date of default until full payment; (ii) defendants-appellees BF General Insurance Company, Inc. and The Imperial Insurance, Inc. be ordered to pay the amount of P200,000.00 each plus interest at fourteen (14%) percent per annum from date of default until full payment; and, (iii) defendants-appellees be ordered to pay, jointly and severally, the attorney's fees and costs of suit.

In their respective answers, defendants-appellees all prayed for the outright dismissal of the complaint. According to defendant-appellee Clarita N. Siscar,[20] plaintiff-appellant had no cause of action against her as she was not in arrears in the payment of her obligations. As counterclaim, defendant-appellee Clarita N. Siscar prayed for moral damages.

In its Answer,[21] defendant-appellee BF General Insurance Company, Inc. alleged, among others, that (i) the surety bonds it issued were unenforceable because plaintiff-appellant, in connivance with defendant-appellee Clarita N. Siscar, committed fraud by not disclosing that the surety bonds would secure the payment of lottery tickets already issued, and (ii) the obligations secured by the surety bonds had all been extinguished or rendered invalid by novation of the contract between plaintiff-appellant and defendant-appellee Clarita N. Siscar without the knowledge and concurrence of defendant-appellee BF General Insurance Company, Inc.

On the other hand, defendant-appellee The Imperial Insurance, Inc. alleged in its Answer[22] that the complaint failed to state a cause of action as the surety bonds had not been appended to and/or alleged in the complaint.

During the pre-trial on July 2, 2002,[23] the personal circumstances of the parties and the existence of the contract for provincial distributor were admitted.

During the continuation of the pre-trial,[24] with plaintiff-appellant and defendant-appellee BF General Insurance

Company, Inc. in attendance, the following were the admitted facts and issues for resolution:

“3. Facts, documents or matters which may be admitted, agreed upon or made the subject of stipulation - Defendant admitted the following facts:

That the amount of P200,000.00 is secured by defendant BF General Insurance Company, Inc. under Surety Bond Nos. 02576-77, 03640-41 as stated in paragraph 9 of the complaint;

That a demand letter for BF General Insurance Company, Inc. was made by PCSO, but the latter refused to pay the obligation;

That the premiums for these Surety Bonds were duly paid by defendant, Clarita N. Siscar.

4. Statement of the issues – For the plaintiff the issue is whether or not defendant BF General Insurance Company, Inc. is liable to the plaintiff in the amount of P200,000.00 as stated in the surety bond, and the corresponding penalties and interests that will accrue thereto; and whether or not plaintiff is entitled to attorney's fees and cost of suit. For the defendant, the issue is whether or not BF General Insurance Company, Inc. is liable in accordance with the Indemnity Agreement entered into with the PCSO.”[25]

In an Order dated November 5, 2002,[26] Branch 78, RTC, Quezon City declared defendant-appellee The Imperial Insurance, Inc. in default for failure of its counsel to appear during the pre-trial on September 23, 2002.

In the meantime, the case was re-raffled[27] to Branch 97, RTC, Quezon City (hereinafter referred to as “the trial court”) as Branch 78, RTC, Quezon City was designated as Drugs Court.[28]

During trial, plaintiff-appellant presented its employees as witnesses, to wit: (i) Amparo Amigo,[29] Officer-in-Charge, Credit Accounts Division; (ii) Clarita Mandras,[30] Issuing Teller, Sales Department; (iii) Gorgonia Culang,[31] Issuing Teller, Sales Department; and, (iv) Sonia Romero,[32] Sales Department Supervisor. The testimony of Victoria Clarin, Issuing Teller, Sales Department, was dispensed with.[33] In an Order dated May 15, 2007,[34] the RTC admitted plaintiff-appellant's Formal Offer of Evidence.

On June 15, 2007, defendant-appellee Clarita N. Siscar filed a Demurrer to Evidence[35] on the grounds that (i) after the execution of the contract for provincial distributor, defendant-appellee Clarita N. Siscar stopped getting lottery tickets from plaintiff-appellant as she had grown old and tired, and (ii) plaintiff-appellant failed to prove that defendant-appellee Clarita N. Siscar authorized a certain Benjamin De Castro to accept lottery tickets in her behalf as the former was not able to present a special power of attorney designating Benjamin de Castro as her attorney-in-fact.

In an Order dated July 17, 2007,[36] the trial court denied for lack of merit defendant-appellee Clarita N. Siscar's Demurrer to Evidence. Defendant-appellee Clarita N. Siscar filed a motion for reconsideration[37] of the Order dated July 17, 2007, but the trial court denied the same in an Order dated October 22, 2007.[38]

Defendant-appellee Clarita N. Siscar filed with the Court of Appeals a Petition for Certiorari[39] under Rule 65, 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 101589, assailing the trial court's Orders dated July 17, 2007 and October 22, 2007. In its Decision dated October 7, 2008,[40] the then Third (3rd) Division[41] of the Court of Appeals affirmed the trial court's denial of defendant-appellee Clarita N. Siscar's Demurrer to Evidence. According to the Court of Appeals, trial should proceed because despite the failure of plaintiff-appellant to present before the trial court a special power of attorney because (i) plaintiff-appellant had clearly established the existence of a contract of distributorship and the fact that it was only Benjamin de Castro who had been transacting for and in behalf of defendant-appellee Clarita N. Siscar, and (ii) there was no evidence showing that defendant-appellee Clarita N. Siscar revoked the contract of distributorship and impugned the

authority of Benjamin de Castro.[42]

As defendant-appellee Clarita N. Siscar did not file a motion for reconsideration or an appeal from the aforementioned Decision dated October 7, 2008 in CA-G.R. SP No. 101589, the Court of Appeals Decision dated October 7, 2008 became final and executory.[43]

Meanwhile, during the hearing on February 29, 2008, the trial court directed counsel for defendant-appellee Clarita N. Siscar to present its witness in the next scheduled hearing, otherwise the trial court would grant plaintiff-appellant's motion that defendant-appellee Clarita N. Siscar be declared to have waived her right to present evidence.[44]

As counsel for defendant-appellee Clarita N. Siscar did not attend the hearing on May 13, 2008, the trial court issued an Order declaring that defendant-appellee Clarita N. Siscar had waived her right to present evidence.[45]

On September 19, 2008, defendant-appellee BF General Insurance Company, Inc. presented as witness its Claims Manager Metodio Arroyo.[46]

In a Decision dated April 25, 2012, the trial court dismissed plaintiff-appellant's complaint on the ground that plaintiff-appellant failed to prove its case by preponderance of evidence. Thus:

“WHEREFORE, premises considered and for failure of the plaintiff to prove its case by a preponderance of evidence, the instant case is hereby DISMISSED.

The counterclaims and crossclaims are likewise DISMISSED for lack of merit.

SO ORDERED.”[47]

Hence, plaintiff-appellant filed the present appeal[48] which is premised on the following assignment of errors:

THE REGIONAL TRIAL COURT (RTC) GRAVELY ERRED IN DISMISSING PCSO'S COMPLAINT ALLEGEDLY FOR ITS FAILURE TO PROVE ITS CASE BY A PREPONDERANCE OF EVIDENCE, FINDING THAT:

- PCSO FAILED TO PRESENT THE SPECIAL POWER OF ATTORNEY THAT CLARITA N. SISCAR EXECUTED AUTHORIZING BENJAMIN DE CASTRO TO REPRESENT HER IN DEALING WITH PCSO.

- PCSO FAILED TO PRODUCE THE ORIGINALS OF THE SALES INVOICES.[49]

Only defendant-appellee BF General Insurance Company, Inc. filed an appellee's brief contending, among others, that “the subject surety bonds issued by defendant-appellee BF General are unenforceable”[50] because “the sweepstakes tickets were already released before the said bonds were issued, which fact was never reported or disclosed to the defendant-appellee BF General”[51] and defendant-appellee Clarita N. Siscar “failed to disclose x x x that she was already in default in the payment of her obligation with plaintiff-appellant PCSO since 1987, long before it had obtain surety bonds with defendant-appellee BF General.”[52]

THE ISSUE

Whether the trial court erred in finding that plaintiff-appellant failed to prove its case by preponderance of evidence.

THE COURT’S RULING

In holding that plaintiff-appellant failed to prove its case by preponderance of evidence, the trial court noted that (i) plaintiff-appellant's witnesses admitted defendant-appellee Clarita N. Siscar was not the one who received

from plaintiff-appellant the lottery tickets but a certain Benjamin de Castro who failed to present a special power of attorney from defendant-appellee Clarita N. Siscar; (ii) there was no evidence showing that defendant-appellee Clarita N. Siscar ratified the acts of her alleged attorney-in-fact; (iii) there was no evidence showing that, by her own acts and admissions, defendant-appellee Clarita N. Siscar held out to the public that Benjamin de Castro was authorized to receive from plaintiff-appellant the lottery tickets; (iv) plaintiff-appellant was negligent when it failed to verify the identity and authority of the person who was receiving the lottery tickets in behalf of defendant-appellee Clarita N. Siscar; and, (v) plaintiff-appellant failed to produce the originals of its sales invoices. As held by the trial court:

“In the instant case, there appears to be no real and definite act of ratification from defendant Siscar. There were neither specific testimonies or evidence to show that it was through her representation that defendant Siscar put up surety bonds in the total amount of P400,000.00 in 1989 and 1990 to be able to continue securing sweepstakes tickets from plaintiff PCSO and making partial payments on her account.

Although plaintiff PCSO presented four (4) witnesses to prove its point, they all, however, testified in chorus that they have not seen defendant Siscar but only one Benjamin de Castro.

x x x x x x x x

The main thrust of plaintiff PCSO is that Benjamin de Castro was acting in behalf of defendant Siscar through a special power of attorney. Unfortunately, plaintiff PCSO was not able to produce the said special power of attorney.

x x x x x x x x

It is evident from the records that there was no clear showing that, by her own acts and admissions, defendant Siscar held out Benjamin de Castro to the public as her representative to secure sweepstakes tickets for plaintiff PCSO. As repeatedly stated, witnesses for plaintiff PCSO testified and admitted that they had not seen defendant Siscar.

x x x x x x x x

Verily, the most prudent thing plaintiff PCSO should have done was to ascertain the identity and authority of the person who was accepting the sweepstakes tickets. Their claims, therefore, are negated by their own negligence, hence, are bound by the consequences.

x x x x x x x x

Here, there appears to be no false representation or concealment or any act on the part of defendant Siscar which would make out public the act of Benjamin de Castro and make an impression that the latter was acting in her behalf. In fact, such absence was bolstered by the fact that the witnesses for plaintiff PCSO testified that they had not seen defendant Siscar personally.

x x x x x x x x

As a final note, plaintiff PCSO failed to produce the originals of its Sales Invoices.

x x x x x x x x

In the instant case, it is the duty of plaintiff PCSO to produce the originals because the subject of the inquiry is the content of the Sales Invoices (Exh. “C”), in which case there can be no evidence of the contents of the writing other than the writing itself.

The contention of the witnesses for plaintiff PCSO that they submitted the original documents to their Legal Division and that the same can no longer be found because of the lapse of time cannot be given due credit by this Court.”[53]

Plaintiff-appellant faults the trial court in so ruling. Allegedly, (i) “Siscar admitted her accountabilities to PCSO in her letters to OGCC and even requested that she be given ample time to pay her obligation on staggered

basis;”[54] (ii) “Siscar never impugned De Castro's authority in all her transactions with PCSO x x x [and] she even validated these transactions by making partial payments when presented the 30 April 1996 Statement of Account;”[55] (iii) “PCSO will be unjustly and greatly prejudiced if Siscar is absolved from her accountability simply because PCSO failed to show the SPA designating de Castro as her attorney-in-fact;”[56] (iv) “the absence of the Special Power of Attorney (SPA) is immaterial because Siscar never repudiated the authority [of Benjamin de Castro] nor did she revoke the Contract;”[57] (v) “Siscar never presented any witness or pieces of evidence to rebut the evidence-in-chief that PCSO presented;”[58] (vi) “PCSO presented the Sales Invoice through its witnesses during trial”[59] and “the Court admitted these Sales Invoices when PCSO formally offered them in evidence;”[60] (vii) “Siscar, in her Answer, failed to deny the amount claimed in the Complaint. She merely claimed that she has no arrearages with PCSO, but such was a mere allegation that Siscar never substantiated;”[61] (viii) “Siscar voluntarily waived her right to present evidence during trial. Thus, these pieces of un rebutted evidence clearly established Siscar's obligation to PCSO;”[62] and, (ix) “BF and Imperial are liable to PCSO for the secured amount.”[63]

The appeal, insofar as plaintiff-appellant's claim against defendant-appellee Clarita N. Siscar is concerned, has merit.

At the outset, it bears stressing that defendant-appellee Clarita N. Siscar did not at all present evidence in the proceedings below. In an Order dated May 13, 2008, the trial court declared that she had waived her right to present evidence. Neither did she file an appellee's brief in the present appeal.

It is a basic rule in evidence that he who alleges must prove his case or claim by the degree of evidence required.[64] In civil cases, the rule is settled that the burden of proof is upon the plaintiff to establish his case by preponderance of evidence.[65] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of the evidence” or “greater weight of the credible evidence.”[66] It is a phrase which, in the last analysis, means probability of the truth.[67] It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[68]

In support of its complaint for sum of money to collect the unpaid lottery tickets from defendant-appellee Clarita N. Siscar in the amount of P1,178,214.81,[69] plaintiff-appellant presented the following pieces of documentary evidence: (i) letter dated October 1, 1996 of defendant-appellee Clarita N. Siscar addressed to Deputy Government Corporate Counsel Virgilio C. Abejo requesting for a period of thirty (30) days within which to verify her accountability with plaintiff-appellant;[70] (ii) letter dated October 22, 1996 of defendant-appellee Clarita N. Siscar addressed to Government Corporate Counsel Oscar Garcia proposing a payment scheme for the settlement of her obligation with plaintiff-appellant;[71] (iii) sixty (60) photocopied Credit Sales Invoices showing that lottery tickets were received by defendant-appellee Clarita N. Siscar through her attorney-in-fact Benjamin Castro;[72] (iv) Contract for Provincial Distributor;[73] (v) Surety Bonds;[74] (vi) demand letters dated August 18, 1992,[75] September 28, 1992[76] and September 16, 1996;[77] (vii) OGCC letter dated October 1, 1996 informing defendant-appellee Clarita N. Siscar that plaintiff-appellant would defer court action until October 31, 1996.[78]

In her letter October 1, 1996,[79] defendant-appellee Clarita N. Siscar admitted having unpaid obligations to plaintiff-appellant, albeit she asked that she be given thirty (30) days to verify with the latter the actual amount due, while in her letter dated October 22, 1996,[80] she proposed a payment scheme for the settlement of said obligations. These letters, which were not objected to, showed that defendant-appellee Clarita N. Siscar had unpaid obligation to plaintiff-appellant.

Under Section 26, Rule 130, Revised Rule on Evidence, “the act, declaration or omission of a party as to a relevant fact may be given in evidence against him.” An admission, if voluntary, is admissible against the admitter for the reason that it is fair to presume that the admission corresponds with the truth, and it is the admitter's fault if the admission does not. By virtue of its being made by the party himself, an admission is competent primary evidence against the admitter.[81]

Also, the rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[82]

In her answer, defendant-appellee Clarita N. Siscar denied authorizing a certain Benjamin de Castro to receive in her behalf from plaintiff-appellant the lottery tickets. Record, however, bears that not only did defendant-appellee Clarita N. Siscar know Benjamin de Castro, the latter was even actively involved in the proceedings a quo. The trial court's Order dated March 21, 2001[83] which initially dismissed plaintiff-appellant's complaint for failure to prosecute, was received by Benjamin De Castro.[84] It is worth mentioning that said Order was issued by the trial court before defendant-appellee Clarita N. Siscar's counsel filed on September 12, 2001 his Formal Entry of Appearance.[85] Also, when defendant-appellee Clarita N. Siscar's counsel could not attend the pre-trial conference on February 8, 2002,[86] it was Benjamin De Castro who appeared on his behalf in the said proceeding and represented defendant-appellee Clarita N. Siscar.[87]

Significantly, plaintiff-appellant's witness Amparo Amigo positively testified that the signatures appearing on the letters dated October 1, 1996 and October 22, 1996 were those of Benjamin de Castro. Thus:

“ATTY. ADACI (continuing)

x x x x x x x x

Q During the previous trial you marked additional documents Exhibits "J" and "J-1" a Letter purportedly sent to Office of the Government Corporate Counsel dated October 1, 1996 and October 22, 1996. Now, I would like to invite again your attention to the signature appearing therein above the type written name Clarita Siscar, can you please give us your observation whether you know anything about this, in relation also to signature appearing in the Sales invoice, if this is the signature of Clarita Siscar or Benjamin de Castro?

A I think that is the signature of Mr. De Castro because it is the same with that appearing on the Invoices, sir.

x x x x x x x x”[88]

Notably, despite rigid cross-examination, plaintiff-appellant's witnesses were unwavering in their testimony that it was only Benjamin de Castro who transacted with plaintiff-appellant for and in behalf of defendant-appellee Clarita N. Siscar. As Issuing Teller Clarita Mandras testified:

“ATTY. ADACI:

x x x x x x x x

Q Madam witness you identified the signature of C. Siscar the defendant in this case in Exhibit "C-15" appearing on bottom right corner of the document, now do you recall or can you recall who signed this Exhibit "C-15"?

x x x x x x x x"[88]

A The person who is getting the ticket sir.

ATTY. ADACI:

Q And who is that person?

A Benjie de Castro.

Q Madam witness, if a person comes to your office and try to secure or get a ticket aside from the person who is given the authority you also asked for a Special Power of Attorney, correct?

A Yes sir.

Q Now, do you have with you any proof that this Benjamin de Castro was authorized by Clarita Siscar?

A Yes sir.

Q You don't have it with you right now?

A It is in our office sir.

Q Have you seen this Clarita Siscar in person?

A I have not met her, I have not known her, it's only Benjamin de Castro whom I met.

Q So since your employment in 1982 up to the present time you have not seen this Clarita Siscar?

A No sir.

Q Now, have you seen this Special Power of Attorney issued by Clarita Siscar to Benjamin de Castro?

A No sir because since I arrived there it was Benjamin de Castro whom I met.

Q So when you entered the PCSO it had already been the practice that this person you said Benjamin de Castro is the one receiving the tickets of Clarita Siscar?

A Yes sir.

Q So you didn't ask anymore for any authority from this Benjamin de Castro?

A Not anymore sir.

Q This Sales Invoice "B-15" was issued sometime in 1987?

A Yes sir. (witness nodding)

Q So in 1987 you have not asked any authority from this Benjamin de Castro to receive this ticket of Clarita Siscar, correct?

A Its not needed anymore sir because since we arrived that was already the procedure.

Q Three (3) years later in 1990, which is covered by Sales Invoice 53, which you said you have signed, to be specific July 27, 1990 you again assisted in the issuance of ticket to this Clarita Siscar through Benjamin de Castro?

A Yes sir.

Q And you have not again asked De Castro if he has authority?

A No sir because it's not really needed.

Q Now, I will show to you Exhibit "C-15" which was issued sometime in 1987 and you also identified the signature of Clarita Siscar on the right portion correct?

A Yes sir.

Q I'm showing to you likewise Exhibit "C-53" which you said you were the one who assisted in issuing this Sales Invoice, now, there is a signature on the bottom right portion, do you know whose signature is that?

A Benjamin de Castro sir.

Q I would like to show to you the signature of Benjamin de Castro appearing on "C-15" and that of appearing on "C-53", will you please tell us whether these are similar or dissimilar or not the same signature as appearing therein?

A I do not know if he is changing his signature but that's remain that he signed it in my presence.

Q But what I am asking you Madam witness these are dissimilar or not the same signatures as appearing as you

can see?

A I do not know if he is changing his signature but I know that he signed it my presence.”[89]

Issuing Teller Gorgonia Culang testified:

“ATTY. ADACI:

x x x x x x x x

Q Do you know the other provincial distributors who are getting tickets?

A Yes sir, they are plenty.

x x x x x x x x

Q Sometimes these persons get ticket for and in behalf of their fellow distributors?

A No sir.

Q Is it not a fact for example Madam witness this Cuasi also sometimes gets ticket for and in behalf of Clarita N. Siscar?

A No sir, that's prohibited.

x x x x x x x x

ATTY. RIGONAN:

Q Ms. Witness although you stated that these signatures as you have now seen are quite different but do you see to it Ms. Witness that you released these sweepstakes ticket and have it really signed in front of you?

A Yes, ma'am.

x x x x x x x x

ATTY. ADACI:

Q Madam witness you did not confront the recipient of these tickets why this person receiving has different or various signatures appearing in the Credit Sales Invoices?

x x x x x x x x

A There is only one person who gets the ticket and that is Benjie de Castro.

ATTY. ADACI:

The answer is not responsive to my question your Honor what I am asking is you did not question the recipient why he has various signatures.

COURT:

The answer is no more because there is one and the same person.

ATTY. ADACI:

No your Honor...

COURT:

Your answer was that. It was the same Benjamin de Castro who was the one receiving...

ATTY. ADACI:

My question is she did not confront...

COURT:

Yes! Her answer is No because it was always have been Benjamin de Castro.”[90]

The foregoing testimonies clearly established the fact that Benjamin de Castro, the only person accepting from plaintiff-appellant the lottery tickets intended for defendant-appellee Clarita N. Siscar, was authorized by defendant-appellee Clarita N. Siscar to transact with plaintiff-appellant in her behalf.

Significantly, the Court of Appeals, in its Decision dated October 7, 2008 affirming the trial court's denial of defendant-appellee Clarita N. Siscar's Demurrer to Evidence, ruled that despite the absence of a special power of attorney, plaintiff-appellant had established that Benjamin de Castro was transacting for and in her behalf since, among others, it was only Benjamin de Castro and no other person who was receiving the lottery tickets for and in behalf of defendant-appellee Clarita N. Siscar, and she never impugned the authority of Benjamin de Castro in all her transactions with plaintiff-appellant. As held:

“x x x It appears that the sole argument of petitioner on why she should not be faulted for the outstanding obligation incurred by her to respondent PCSO is the absence of a Special Power of Attorney (SPA) designating her nephew, Benjamin de Castro, as attorney-in-fact to secure the sweepstakes ticket from respondent PCSO. Petitioner advanced the idea that somebody must have been representing himself or herself

and had been using her accounts without her knowledge considering that she had not authorized any person to do business for her, much less did she receive any of those tickets subject of the controversy.

x x x x x x x x

It is undisputed that after the Contract for Provincial Distributorship was entered into in 1981 by and between respondent PCSO and petitioner, it was petitioner's nephew, Benjamin de Castro, who has been transacting for and on behalf of said petitioner. That only Benjamin de Castro, and no other person, transacted for and on behalf of said petitioner is well-established. This was attested to by the Issuing Tellers of respondent PCSO during trial. More importantly, there is no showing that the Contract of Provincial Distributorship was ever revoked by petitioner nor the authority of Benjamin de Castro in all her transactions with respondent PCSO was ever impugned by her. The Answer of said petitioner will reveal that the latter merely claims that she has no arrearages with respondent PCSO.”[91]

Defendant-appellee Clarita N. Siscar did not at all file any motion for reconsideration or appeal from the foregoing Decision of the Court of Appeals. Accordingly, the Decision had become final and executory and defendant-appellee Clarita N. Siscar is bound by the Court of Appeals ruling.

Notably, the Credit Sales Invoices show the quantity, serial numbers and value of lottery tickets received by defendant-appellee Clarita N. Siscar from plaintiff-appellant for a particular draw. Plaintiff-appellant points out that the existence of the Credit Sales Invoices was proven during trial because (i) the testimonies of plaintiff-appellant's witnesses stand unchallenged;[92] (ii) the trial court admitted these invoices when formally offered in evidence;[93] and, (iii) in her answer, defendant-appellee Clarita N. Siscar failed to deny the amount claimed by plaintiff-appellant.[94]

In her Comment/Opposition to Offer of Exhibits,[95] defendant-appellee Clarita N. Siscar objected to the photocopied Credit Sales Invoices presented by plaintiff-appellant on the ground that the originals thereof were not presented.[96]

The Best Evidence Rule stipulates that in proving the terms of a written document the original of the document must be produced in court.[97] Section 3, Rule 130, Revised Rules on Evidence, which embodies the Best Evidence Rule, provides:

“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 under 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.”

The sixty (60) Credit Sales Invoices being mere photocopies, are secondary evidence. A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in

some authentic document, or by the testimony of witnesses in the order stated.[98] Thus, the offeror of the secondary evidence must prove: “(a) the existence or due execution of the original; (b) the loss and destruction of the original, or the reason for its non-production in court; and, (c) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed.”[99]

Plaintiff-appellant's witness Clarita Mandras[100] identified Credit Sales Invoices marked as Exhibits “C-15,” “C-25,” “C-47” to “C-48” and “C-51” to “C-53,”[101] while plaintiff-appellant's witness Gorgonia Culang,[102] identified Credit Sales Invoices marked as “C-1” to “C-14,” “C-16” to “C-19,” “C-30” to “C-32,” “C-42” and “C-57” to “C-59.”[103] These witnesses held the position of Utility Workers but were assigned at plaintiff-appellant's Sales Department and actually served as Issuing Tellers.

According to plaintiff-appellant, the originals of these Credit Sales Invoices were in the possession of its Legal Department and that the same had been lost while in the latter's possession.[104] While the fact of loss was not supported by any certification from plaintiff-appellant's Legal Department, the Court finds that these Credit Sales Invoices proved that defendant-appellee Clarita N. Siscar had unpaid lottery tickets amounting to P1,178,214.81 as of April 30, 1996. Production of the original may be dispensed with, in the trial court's discretion, whenever the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.[105]

As earlier discussed, the testimonies of plaintiff-appellant's witnesses Clarita Mandras and Gorgonia Culang that the lottery tickets were received by defendant-appellee Clarita N. Siscar's representative Benjamin de Castro, were uncontroverted. Likewise undisputed was the testimony of plaintiff-appellant's witness Amparo Amigo that the signature appearing on defendant-appellee Clarita N. Siscar's letters dated October 1, 1996 and October 22, 1996 negotiating the settlement of her accountability with plaintiff-appellant, was that of Benjamin de Castro.

Besides, the lack of document showing that Benjamin de Castro was authorized to transact with plaintiff-appellant in behalf of defendant-appellee Clarita N. Siscar, is not fatal. Record bears that defendant-appellee Clarita N. Siscar knew Benjamin de Castro and the latter was actively involved in the proceedings a quo. Thus, defendant-appellee Clarita N. Siscar is estopped from denying that in her transactions with plaintiff-appellant, she did not authorize Benjamin de Castro to act for and in her behalf.

With respect to defendants-appellees BF General Insurance, Inc. and The Imperial Insurance, Inc., plaintiff-appellant failed to prove the latter's liability, as the notices of claim were filed beyond the period prescribed under the surety agreement. The surety bonds issued by defendant-appellee BF General Insurance, Inc. uniformly provided that the “notice of claims against the SURETY must be given the bonding Company not later than ten (10) days from said expiration date, and failure to do so shall release the SURETY from all liabilities under this bond and shall be a bar to any action against it.”[106] The surety bond issued by defendant-appellee BF General Insurance, Inc. expired on October 25, 1990 and November 9, 1990, and it was only on August 18, 1992[107] that plaintiff-appellant filed its claim against the former.

The surety bond issued by defendant-appellee The Imperial Insurance, Inc uniformly provided that “said bond will be cancelled Ten (10) DAYS after its expiration, unless the surety is notified of any existing obligations thereunder.”[108] While the surety bond issued by defendant-appellee The Imperial Insurance, Inc. expired on February 8, 1991 and March 16, 1991, it was only on September 28, 1992[109] that plaintiff-appellant filed its claim against the former.

To recapitulate, the pieces of evidence presented by plaintiff-appellant sufficiently established the following facts showing defendant-appellee Clarita N. Siscar's liability to plaintiff-appellant: (i) all lottery tickets intended for defendant-appellee Clarita N. Siscar were received by a certain Benjamin de Castro, and (ii) Benjamin de Castro

was authorized by defendant-appellee Clarita N. Siscar to transact with plaintiff-appellant in her behalf.

While it is a well-recognized rule that factual findings of the trial court are entitled to great weight and respect by this Court, the rule is not without exceptions, such as when the inferences made are manifestly mistaken and the judgment is based on misapprehension of facts or premised on the absence of evidence on record,[110] as what happened in the present case. Thus, the higher court is not entirely precluded from reviewing and reversing these findings if it is not convinced that they conform to the evidence of record and to its own impressions of the credibility of the witnesses.[111]

Defendant-appellee Clarita N. Siscar is thus liable to plaintiff-appellant for the amount of P1,178,214.81, representing her unpaid lottery tickets as of April 30, 1996. Said amount is subject to interest of twelve percent (12%) per annum, reckoned from date of default until full payment. The Contract for Provincial Distributor expressly stipulated the payment of interest at twelve (12%) percent per annum, to be reckoned from date of default until full payment in case “all ticket accounts of the DISTRIBUTOR with the PCSO not paid within ten (10) days after the dated of draw.”[112] Since defendant-appellee Clarita N. Siscar freely entered into the contract, the stipulations in the contract are binding on her.[113]

WHEREFORE, the trial court's Decision dated April 25, 2012 is REVERSED and SET ASIDE. Accordingly, defendant-appellee Clarita N. Siscar is ordered to pay plaintiff-appellant Philippine Charity Sweepstakes Office the sum of ONE MILLION ONE HUNDRED SEVENTY EIGHT THOUSAND TWO HUNDRED FOURTEEN and 71/100 PESOS (P1,178,214.81) plus interest at the rate of twelve percent (12%) per annum from date of default until full payment.

SO ORDERED.

Cruz, S. C., and Hernando, R. P. L., JJ., concur.

[1] pp. 39-53, Rollo; pp. 561-575, Record

[2] Exh. “B”, pp. 6-8 and 456-458, Record

[3] Exh. “D”, pp. 82-85 and 518-521, Record; Exh. “4”, TSN dated September 19, 2008, p. 102; Indemnity Agreement dated Oct. 25, 1989, p. 98, Record; Exh. “2-d”, TSN dated September 19, 2008, p. 104

[4] Exh. “E”, pp. 533-536, Record

[5] Exh. “D-1”, pp. 86-89 and 522-524, Record; Exh. “5”, TSN dated September 19, 2008, p. 103; Indemnity Agreement dated Oct. 25, 1989, p. 99, Record; Exh. “2-d”, TSN dated September 19, 2008, p. 104

[6] Exh. “E-1”, pp. 537-540, Record

[7] Exh. “D-2”, pp. 90-93 and 525-528, Record; Exh. “2”, TSN dated September 19, 2008, p. 101; Indemnity Agreement dated Nov. 1989, p. 100, Record; Exh. “2-d”, TSN dated September 19, 2008, p. 104

[8] Exh. “E-2”, pp. 541-544, Record

[9] Exh. “D-3”, pp. 94-97 and 529-532, Record; Exh. “3”, TSN dated September 19, 2008, p. 102; Indemnity Agreement dated Nov. 1989, p. 101, Record; Exh. “2-d”, TSN dated September 19, 2008, p. 104

[10] Exh. “E-3”, pp. 545-548, Record

[11] Exh. “G”, pp. 11-12 and 556-557, Id.

- [12] Exh. “H”, pp. 10 and 558, Record; Exh. “6”, TSN dated September 19, 2008, p. 106
- [13] Exh. “F”, p. 555, Record
- [14] Exh. “I”, pp. 549-554, Id.
- [15] Exh. “K”, pp. 9 and 559, Id.
- [16] Exh. “L”, p. 238, Id.
- [17] Exh. “K-1”, p. 560, Id.
- [18] Exh. “L-1”, p. 239, Id.
- [19] pp. 1-5, Id.
- [20] pp. 31-33, Id.
- [21] pp. 36-42, Id.
- [22] pp. 48-52, Id.
- [23] Pre-Trial Order dated July 2, 2002, pp. 130-131, Id.
- [24] Pre-trial Order dated September 23, 2002, pp. 134-136, Id.
- [25] pp. 134-135, Id.
- [26] p. 144, Id.
- [27] See: p. 188, Id.
- [28] Order dated April 22, 2005, pp. 183 and 186, Id.
- [29] TSN dated November 11, 2005 and February 21, 2006; Order dated November 11, 2005, p. 207, Record; Order dated February 21, 2006, p. 210, Record
- [30] TSN dated October 10, 2006; Order dated October 10, 2006, p. 223, Record
- [31] Id.
- [32] TSN dated February 13, 2007; Order dated February 13, 2007, p. 225, Record
- [33] TSN dated October 10, 2006
- [34] p. 253, Record
- [35] pp. 257-261, Id.
- [36] p. 273, Id.
- [37] pp. 277-281, Id.
- [38] p. 288, Id.
- [39] pp. 293-297, Id.
- [40] pp. 414-424, Id.
- [41] Composed of Associate Justices Martin S. Villarama, Noel G. Tijam and Arturo G. Tayag (ponente)

[42] pp. 421-423, Record

[43] Minute Resolution dated February 5, 2009, p. 437, Id.

[44] Order dated February 29, 2008, p. 338, Id.

[45] Order dated May 13, 2008, p. 386, Id.

[46] TSN dated September 19, 2008

[47] p. 53, Rollo; p. 575, Record

[48] pp. 576-577 and 578-579, Record

[49] p. 24, Rollo

[50] p. 70, Id.

[51] Id.

[52] p. 81, Id.

[53] pp. 50-53, Rollo; pp. 572-575, Record

[54] p. 31, Rollo

[55] p. 32, Id.

[56] p. 34, Id.

[57] p. 32, Id.

[58] p. 34, Id.

[59] p. 35, Id.

[60] Id.

[61] Id.

[62] Id.

[63] p. 36, Id.

[64] Manlar Rice Mill, Inc. vs. Deyto, G.R. No. 191189, January 29, 2014

[65] Luga vs. Arciaga, 654 SCRA 661, July 27, 2011

[66] Heirs of the late Felix M. Bucton vs. Go, G.R. No. 188395, November 20, 2013

[67] Chua vs. B.E. San Diego, Inc., 695 SCRA 408, April 10, 2013

[68] BJDC Construction vs. Lanuzo, G.R. No. 161151, March 24, 2014, citing Raymundo vs. Lunaria, 569 SCRA 526, October 17, 2008

[69] Exh. "I", pp. 549-554, Record; Exh. "F", p. 555, Record

[70] Exh. "L", p. 238, Id.

[71] Exh. "L-1", p. 239, Id.

[72] Exhs. “C” to “C-59”, pp. 459-517, Id.

[73] Exh. “B”, pp. 6-8 and 456-458, Id.

[74] Exhs. “D” to “D-3”, pp. 82-97 and 518-532, Record; Exhs. “2” to “5”, TSN dated September 12, 2008, pp. 101-103; Exhs. “E” to “E-3”, pp. 533-548, Record

[75] Exh. “G”, pp. 11-12 and 556-557, Record

[76] Exh. “H”, pp. 10 and 558, Record; Exh. “6”, TSN dated September 19, 2008, p. 106

[77] Exh. “K”, pp. 9 and 559, Record

[78] Exh. “K-1”, p. 560, Id.

[79] Exh. “L”, p. 238, Id.

“x x x

Humihingi po ako ng tatlumpong araw simula sa araw na ito ng palugit sa inyo at aalamin ko muna po sa Philippine Charity Sweepstakes Office (PCSO) kung bakit naging ganito kalaki ang utang ko bago po ako makipag-ayos sa inyong tanggapan.

x x x”

[80] Exh. “L-1”, p. 239, Id.

“x x x

Ako po si Clarita Siscar na nagkautang sa Philippine Charity Sweepstakes Office ay nangangako na huhulugan ko na lamang po ito kada buwan ng halagang limang libong piso (5,000.00) sa unang limang taon. At pagkatapos po ng limang taon ay gagawin ko na po itong walong libong piso (8,000.00) kada buwan. Kung kayo po ay papayag ay uumpisahan ko na po itong paghuhulog simula sa December 1, 1996. ito lamang po ang kaya kong ihulog sapagkat mahina napo ang aking kita at humihingi na lamang po ako ng tulong sa aking mga pamangkin sapagkat ako po ay matanda na. Ito pong pagkakautang kong ito ay nasa pautang din sa mga tagatinda ng sweepstakes.

Umaasa po ako na kayo ay papayag sa kaya kong ihulog. Nawa po ay maunawaan ninyo ako sapagkat wala na akong ibang paraan kung hindi hulugan na lamang po ito upang ako ay makabayad sa Philippine Charity Sweepstakes.

x x x”

[81] People vs. Cristobal, 646 SCRA 599, March 30, 2011

[82] Advance Paper Corporation vs. Tan, G.R. No. 176897, December 11, 2013

[83] p. 53, Record

[84] Id.

[85] pp. 66-67, Id.

[86] pp. 120-121, Id.

[87] p. 122 (back), Id.

[88] TSN dated February 21, 2006, p. 35

[89] TSN dated October 10, 2006, pp. 55-59

[90] Id., pp. 68-72

[91] pp. 421-423, Record

[92] p. 35, Rollo

[93] Id.

[94] Id.

[95] pp. 247-249, Record

[96] pp. 247, Id.

[97] Heirs of Margarita Prodon vs. Heirs of Maximo S. Alvarez and Valentina Clave, 704 SCRA 465, September 3, 2013

[98] Dantis vs. Maghinang, Jr., 695 SCRA 599, April 10, 2013

[99] Heirs of Margarita Prodon vs. Heirs of Maximo S. Alvarez and Valentina Clave, 704 SCRA 465, September 3, 2013

[100] TSN dated October 10, 2006, pp. 46-62

[101] Id., pp. 50

[102] Id., pp. 65-73

[103] Id., pp. 67

[104] TSN dated November 11, 2005, p. 7; TSN dated February 21, 2006, p. 24

[105] Gaw vs. Chua, 551 SCRA 505, April 16, 2008

[106] Exh. "D", pp. 82 and 518, Record; Exh. "D-1", pp. 86 and 522, Record; Exh. "D-2", pp. 90 and 525, Record; Exh. "D-3", pp. 94 and 529, Record

[107] Exh. "G", pp. 11-12 and 556-557, Id.

[108] Exh. "E", p. 533, Id.; Exh. "E-1", p. 537, Id.; Exh. "E-2", p. 541, Id.; Exh. "E-3", p. 545, Id.

[109] Exh. "H", pp. 10 and 558, Id.

[110] See: Ng vs. People, 619 SCRA 291, April 23, 2010

[111] Surtida vs. Rural Bank of Malinao (Albay), Inc., 511 SCRA 507, December 20, 2006

[112] Exh. "B", pp. 7 and 457, Record

[113] See: Titan Construction Corporation vs. Uni-Field Enterprises, Inc., 517 SCRA 180, March 1, 2007

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