

## LUCIO TAN, PETITIONER, VS. THE HON. COURT OF APPEALS AND TERESITA SANCHEZ, RESPONDENTS.

*G.R. No. 100942. August 12, 1992*

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-100942/>

---

### CRUZ, J.:

As far as the Court can see, there are no hidden or double meanings in the contract it is asked to interpret. Both parties agree that it is clear enough, but from their respective opposite viewpoints. The private respondent has been sustained by both the trial court and the respondent court. The petitioner is now before us and insists that they have all erred.

Private respondent Teresita Sanchez invested P100,000.00 in a restaurant called the Manila Bar, then owned and operated by Nilo Tiglao, who agreed that the amount would earn profit in the form of interest at the rate of 14% per annum and could be withdrawn by her at any time. This agreement was embodied in a Contract of Investment dated May 24, 1981.[1] Subsequently, Tiglao assigned all his "rights, interests and good will" over the said restaurant to Lucio Tan, the herein petitioner, in a Deed of Conveyance and Transfer dated March 1, 1982.[2] The consideration of the sale was P400,000.00.

Upon learning of this transaction, Sanchez demanded the return of her investment from the petitioner. Tan acknowledged his obligation to Sanchez and agreed to pay her the full amount in accordance with the terms and conditions of the following promissory note:[3]

#### PROMISSORY NOTE

Manila, Philippines

March 26, 1982

P50,000.00

For and in consideration of taking over the management and operation of the MANILA BAR, a restaurant located at #1220 M. H. del Pilar Street, Ermita, Manila, owned and operated by Mr. NILO TIGLAO, I promise to pay/return to ATTY. TERESITA D. SANCHEZ, or Order, her lawful investment with the Manila Bar in the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS, under the following terms and conditions, to wit:

1. That FIFTY THOUSAND (P50,000.00) PESOS will be paid upon signing of the contract of lease with the owner, his assign, heir or duly authorized representative, of the lot upon which the Manila Bar is erected; and
2. That the balance of FIFTY THOUSAND (P50,000.00) PESOS, shall be payable on or before the expiration of the period of the contract of lease afore-mentioned regardless of the outcome of the operation. In no case shall the period of payment be longer than TWO (2) YEARS.

I hereby agree, that in case of default in payment of this obligation when due and payable to pay an additional

sum equal to TWENTY FIVE (25) PER CENT of the total amount due and payable as Attorney's fees and cost of collection in addition to legal costs provided for under the Rules of Court.

DEMAND AND DISHONOR WAIVED.

SGD. LUCIO TAN

Maker

The contract of lease referred to was concluded on February 6, 1982, and specified a period of two years from April 16, 1982, renewable by the lessee under certain conditions.[4] After the lapse of two years following the conclusion of this contract (and also the executor of the promissory note), Sanchez demanded from the petitioner payment of the balance of P50,000.00. The petitioner refused to pay, and Sanchez sued.

In his answer,[5] Tan claimed that he was ejected from the premises where the Manila Bar was situated by virtue of a writ of execution in an ejectment case to which he was not a party. He had filed a petition for recovery of the premises and the case was still pending in another court. He argued that his dispossession of the Manila Bar prevented him from operating it and constituted a fortuitous event that made him "not legally liable for the payment of his obligations." The plaintiff therefore had no cause of action against him.

Judge Willelmo C. Fortun of the Regional Trial Court of Manila did not agree. In a decision dated June 20, 1985,[6] he declared inter alia as follows:

x x x Under the law, a fortuitous event is defined as an act which though foreseen, cannot be avoided, such as fire, typhoon, flood, and other natural calamities. The ejectment of defendant from the premises of the property in question can hardly be considered as a fortuitous event as defined by law and jurisprudence. Neither would the fact that defendant has filed a case, Civil Case No. 83-16990 (Lucio Tan vs. Hon. Priscilla C. Mijares, etc., et al.) on April 18, 1983, for annulment of judgment, which case is still pending in the Regional Trial Court of Manila, Branch XXIV, excuse defendant from complying with his obligation to pay said balance of P50,000.00 from plaintiff as covenanted by him in said promissory note dated March 26, 1982 (Exh. B). It is elementary that the contract freely agreed upon between the parties is the law between the parties, which they must faithfully comply.

Tan appealed to the respondent court on the sole ground that the lower court erred in finding for the plaintiff despite the fact that there was a clear failure of consideration. Tan lost again. In its decision dated July 12, 1991,[7] the Court of Appeals held that the promissory note clearly called for the payment of the balance of P50,000.00 "not later than the expiration of lease." It observed:

The promissory note is a simple obligation with a period, as correctly found by the lower court. Had the parties intended that payment of the obligation would be based or founded on appellant's running the Manila Bar for a period of two years continuously and without interruption, as interpreted by defendant-appellant, said intention should have been clearly indicated in the agreement. There is nothing in the note to indicate said intention of the parties.

Moreover, defendant-appellant's new defense was never raised in the trial court. It is well-settled that "questions not raised in the lower court cannot be raised for the first time on appeal (Garcia v. CA, 102 SCRA 597; Matienzo v. Sevilla, 1107 SCRA 276). It would indeed be unfair to the adverse party if an entirely new issue is raised on appeal as it had no opportunity to introduce evidence to counteract this new issue" (Anchuelo v. IAC, 147 SCRA 434).

The petitioner is now before us with the following assignment of errors:

## I

THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THAT THE CONSIDERATION FOR THE OBLIGATION OF PETITIONER LUCIO TAN TO PAY P50,000.00 UNDER THE PROMISSORY NOTE WAS THE CONTINUOUS OPERATION OF THE MANILA BAR FOR TWO (2) YEARS; OTHERWISE, THE PROMISSORY NOTE WAS WITHOUT CONSIDERATION.

## II

THE COURT OF APPEALS ERRED IN CONSIDERING THE OBLIGATION UNDER THE PROMISSORY NOTE AS ONLY ONE WITH A PERIOD, SINCE THE PERIOD OF TWO (2) YEARS WAS ALSO THE PERIOD FOR THE PERFORMANCE OF THE CONTINUOUS CONSIDERATION OF OPERATING THE MANILA BAR, WHICH OPERATED LIKEWISE AS A SUSPENSIVE CONDITION.

## III

THE COURT OF APPEALS ERRED IN BELIEVING THAT PETITIONER WAS INTERPRETING THE PROMISSORY NOTE WHEN WHAT WAS BEING DONE WAS MERELY ASCERTAINING THE MEANING OF THE PROMISSORY NOTE IN ORDER TO KNOW WHAT TO APPLY.

## IV

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DEFENSE OF FAILURE OF CONSIDERATION WAS NEVER RAISED IN THE LOWER COURT AND THAT THERE WAS A CHANGE OF THEORY BY PETITIONER.

It seems to us that the petitioner is beating a dead horse. In trying to resurrect his lost cause, he would becloud with nice legal arguments what we also find with the lower courts to be a clear and uncomplicated agreement.

In the first place, if the petitioner would be strictly legal, he must admit that the issue of failure of consideration which he raised in the appellate court was not raised in the trial court. His original defense was fortuitous event, which he said prevented him from complying with his promise to pay the P50,000.00 balance. His Answer with Counterclaim consisted of four typewritten pages and included Admissions, Denials, Affirmative Allegations, Affirmative and Special Defenses, Counterclaim, and Prayer.[8] Nowhere in any of these subtopics was failure of consideration ever pleaded as absolving him from his obligation.

Tan would now have us agree that he raised the defense of failure of consideration in the lower court albeit "not in legal terms." He says he did so "in businessman's terms" when he testified as follows:

Q What happened to the balance if any?

A Well, the balance because our agreement is that for the normal operation whether there is a loss or gain I have to pay her P50,000.00 but on April 15, 1983 I was illegally and forcibly ejected and since this is not a normal operation of the store I did not comply with the promissory note.[9]

Considering the length of his answer with counterclaim and the no less important fact that he was speaking through a lawyer in a legal proceeding, we can only ask why he did not raise the defense of failure of consideration in legal terms. His explanation that he did so in businessman's terms lacks conviction. It strikes us as an awkward afterthought plainly intended to salvage his failure to categorically assert this second defense in the trial court.

The petitioner argues now that there was only "a shift of emphasis" when he raised this ground on appeal,

focusing this time on the fortuitous event as resulting in a failure of consideration. According to him, "the defense of fortuitous event was used twice (1) in its technical sense as suspending the payment of the obligation and (2) as an event which prevented liability, i.e., failure of consideration." [10]

This so-called "shift of emphasis" is also not acceptable because it presupposes that both fortuitous event and failure of consideration were alleged as respondent's defenses in the trial court. The records indicate otherwise.

In the first place, Tan's eviction from the Manila Bar was not a fortuitous event, whether in its technical sense or whatever. [11] (The Court notes that the petitioner has not even tried in any of the pleadings he filed with us to prove the existence of his claimed fortuitous event. He has simply assumed its existence.) Secondly, Tan never said in his answer with counterclaim that his eviction from the Manila Bar was a fortuitous event that resulted in failure of consideration. Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, the only exceptions being a failure to state a cause of action and lack of jurisdiction. [12] The petitioner's quoted testimony did not have the effect of curing that omission. In invoking this ground before the respondent court, the petitioner was not merely shifting emphasis but actually raising a second and completely new issue on appeal.

For this reason alone, the appealed decision should be sustained.

But even on the matter of the correct interpretation of the promissory note, the petition must also fail.

It is a canon of interpretation that the words used in a contract should be given their natural and ordinary meaning unless a technical meaning was intended. An examination of the promissory note shows that it does not come under the exception. On the contrary, we agree with the courts below that the plain understanding of the parties was that the petitioner would pay the private respondent the balance of P50,000.00: (a) on or before the expiration of the two-year period of lease on March 6, 1984; b) regardless of the outcome of the operation of the Manila Bar; and c) in no case beyond the period of two years from March 6, 1982 (or March 26, 1982, date of the promissory note).

The petitioner now contends that the promissory note was issued by him in consideration of his taking over the management and operation of the restaurant and that his eviction therefrom constituted a failure of such consideration that absolved him from liability.

The Court does not see it that way. We read the opening clause of the promissory note, to wit, "for and in consideration of (his) taking over the management and operation of the Manila Bar," as merely explaining why the petitioner was assuming the payment of Sanchez's investment in the restaurant. As he was then already the manager and operator of the Manila Bar, he considered it only proper to acknowledge Sanchez's investment in the business and his obligation to repay her.

Tan was not executing the promissory note because he was taking over the management and operation of the Manila Bar. He had already done that. It was not the promissory note that gave him such authority, for he had earlier acquired that right from Tiglao under the Deed of Conveyance and Transfer. There was no question at all that Tan did not need further permission from the private respondent to continue exercising that right.

We cannot see why the petitioner would promise to pay Sanchez the amount of P100,000.00 for the right to manage and operate the Manila Bar when he already had secured that right from Tiglao. What we see is that the petitioner made the promise to pay Sanchez "for value received," to use the standard phrase, referring to the sum of P100,000.00 which had been invested in the Manila Bar by the private respondent.

The petitioner also says now that his continued management and operation of the Manila Bar was a suspensive

condition of his obligation to pay Sanchez the P50,000.00 balance of her investment, and that its non-fulfillment had the effect of canceling the obligation.

That submission is inconsistent with the fact that he immediately paid one-half of the amount owed on the day the note was executed. There was no suspensive condition for that initial payment. As for the balance of P50,000.00, nowhere does it say in any part of the note that its payment was conditioned upon the petitioner's continued management and operation of the Manila Bar.

The private respondent correctly observes that it would have been a simple matter for the promissor to state clearly in the promissory note that he would pay the balance of P50,000.00 only on condition that he would continue to manage and operate the restaurant during that two-year period of the lease. He did not see fit to include this condition in the promissory note he signed. Assuming an ambiguity in the instrument, we apply the rule in the Civil Code that the ambiguity must be resolved against the person who caused it, in this case the promissor.[13]

Even on equitable grounds, we find that the private respondent is entitled to recover the balance of her investment. It was not her concern that the business failed for her investment was not dependent on its success. Whether the Manila Bar flourished or floundered, she was promised a 14% annual interest on her investment therein and she also had a right to withdraw such investment in full at any time. Having acknowledged that investment in the promissory note, the petitioner was bound to honor and repay it, subject only to the condition that this be done within the grace period allowed him by the investor.

WHEREFORE, the petition is DENIED and the appealed decision AFFIRMED, with costs against the petitioner. Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

---

[1] Exhibit "A."

[2] Exhibit "D."

[3] Orig. Rec., p. 6.

[4] Exhibit "2."

[5] Orig. Rec., pp. 13-16.

[6] Ibid., pp. 70-73.

[7] Rollo, pp. 22-27; Lapeña, Jr., J., ponente with Pronove, Jr. and Santiago, JJ., concurring.

[8] Orig. Rec., pp. 13-16.

[9] TSN, March 7, 1985, p. 7.

[10] Rollo, p. 16.

[11] Escriche defines caso fortuito as "an unexpected event or act of God which could neither be foreseen nor resisted, such as floods, torrents, shipwrecks, conflagrations, lightning, compulsion, insurrections, destruction of buildings by unforeseen accidents and other occurrences of a similar nature."

x x x A caso fortuito presents the following essential characteristics: (1) The cause of the unforeseen and unexpected occurrence, or of the failure of the debtor to comply with his obligation, must be independent of the human will. (2) It must be impossible to foresee the event which constitutes the caso fortuito, or if it can be

foreseen, it must be impossible to avoid. (3) The occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner. And (4) the obligor (debtor) must be free from any participation in the aggravation of the injury resulting to the creditor (*Lasam vs. Smith*, 45 Phil. 657).

[12] *Pe vs. Intermediate Appellate Court*, 195 SCRA 137; *Shoemart, Inc. vs. Court of Appeals*, 190 SCRA 189.

[13] Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.