

**NORA S. EUGENIO AND ALFREDO Y. EUGENIO, PETITIONERS, VS.
HON. COURT OF APPEALS AND PEPSI-COLA BOTTLING COMPANY OF
THE PHILIPPINES, INC., RESPONDENTS.***G.R. No. 103737. December 15, 1994*

Ponente: REGALADO, J.

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Private respondent Pepsi-Cola Bottling Company of the Philippines, Inc. is engaged in the business of manufacturing, making, bottling and selling soft drinks and beverages to the general public. Petitioner Nora S. Eugenio was a dealer of the soft drink products of private respondent corporation. Although she had only one store located at 27 Diamond Street, Emerald Village, Marikina, Metro Manila, Eugenio had a regular charge account in both the Quezon City plant (under the name "Abigail Minimart"**) as well as in the Muntinlupa plant (under the name "Nora Store") of respondent corporation. Her husband and co-petitioner, Alfredo Y. Eugenio, used to be a route manager of private respondent in its Quezon City plant.

On March 17, 1982, private respondent filed a complaint for a sum of money against petitioners Nora S. Eugenio and Alfredo Y. Eugenio, docketed as Civil Case No. Q-34718 of the then Court of First Instance of Quezon City, Branch 9 (now Regional Trial Court, Quezon City, Branch 97). In its complaint, respondent corporation alleged that on several occasions in 1979 and 1980, petitioners purchased and received on credit various products from its Quezon City plant. As of December 31, 1980, petitioners allegedly had an outstanding balance of P20,437.40 therein. Likewise, on various occasions in 1980, petitioners also purchased and received on credit various products from respondent's Muntinlupa plant and, as of December 31, 1980, petitioners supposedly had an outstanding balance of P38,357.20 there. In addition, it was claimed that petitioners had an unpaid obligation for the loaned "empties" from the same plant in the amount of P35,856.40 as of July 11, 1980. Altogether, petitioners had an outstanding account of P94,651.00 which, so the complaint alleged, they failed to pay despite oral and written demands.[1]

In their defense, petitioners presented four trade provisional receipts (TPRs) allegedly issued to and received by them from private respondent's Route Manager Jovencio Estrada of its Malate Warehouse (Division 57), showing payments in the total sum of P80,500.00 made by Abigail's Store. Petitioners contended that had the amounts in the TPRs been credited in their favor, they would not be indebted to Pepsi-Cola. The details of said receipts are as follows:

TPR No. Date of Issue Amount

500320 600 Fulls returned 5/ 6/80 P23,520.00

500326 600 Fulls returned 5/10/80 P23,520.00

500344 600 Fulls returned 5/14/80 P23,520.00

500346 Cash 5/15/80 P10,000.00[2]

Total P80,560.00

Further, petitioners maintain that the signature purporting to be that of petitioner Nora S. Eugenio in Sales Invoice No. 85366 dated May 15, 1980 in the amount of P5,631.00,[3] which was included in the computation of their alleged debt, is a falsification. In sum, petitioners argue that if the aforementioned amounts were credited in their favor, it would be respondent corporation which would be indebted to them in the sum of P3,546.02 representing overpayment.

After trial on the merits, the court a quo rendered a decision on February 17, 1986, ordering petitioners, as defendants therein to jointly and severally pay private respondent the amount of P74,849.00, plus 12% interest per annum until the principal amount shall have been fully paid, as well as P20,000.00 as attorney's fees.[4] On appeal in CA-G.R. CV No. 10623, the Court of Appeals declared said decision a nullity for failure to comply with the requirement in Section 14, Article VIII of the 1987 Constitution that decisions of courts should clearly and distinctly state the facts and the law on which they are based. The Court of Appeals accordingly remanded the records of the case to the trial court, directing it to render another decision in accordance with the requirements of the Constitution.[5]

In compliance with the directive of the Court of Appeals, the lower court rendered a second decision on September 29, 1989. In this new decision, petitioners were this time ordered to pay, jointly and severally, the reduced amount of P64,188.60, plus legal interest of 6% per annum from the filing of the action until full payment of the amount adjudged.[6] On appeal therefrom, the Court of Appeals affirmed the judgment of the trial court in a decision promulgated on September 27, 1991.[7] A motion for the reconsideration of said judgment of respondent court was subsequently denied in a resolution dated January 23, 1992.[8]

We agree with petitioners and respondent court that the crux of the dispute in the case at bar is whether or not the amounts in the aforementioned trade provisional receipts should be credited in favor of herein petitioner spouses. In a so-called encyclopedic sense, however, our course of action in this case and the denouement of the controversy therein takes into account the jurisprudential rule that in the present recourse we would normally have restricted ourselves to questions of law and eschewed questions of fact were it not for our perception that the lower courts manifestly overlooked certain relevant factual considerations resulting in a misapprehension thereof. Consequentially, that position shall necessarily affect our analysis of the rules on the burden of proof and the burden of evidence, and ultimately, whether the proponent of the corresponding claim has preponderated or rested on an equipoise or fallen short of preponderance.

First, the backdrop. It appears that on August 1, 1981, private respondent through the head of its Legal Department, Atty. Antonio N. Rosario, sent an inter-office correspondence to petitioner Alfredo Eugenio inviting him for an interview/interrogation on August 3, 1981 regarding alleged "non-payment of debts to the company, inefficiency, and loss of trust and confidence." [9] The interview was reset to August 4, 1981 to enable said petitioner to bring along with him their union president, Luis Isip. On said date, a statement of overdue accounts was prepared showing that petitioners owed respondent corporation the following amounts:

Muntinlupa Plant

Nora's Store

Trade Account P38,357.20 (as of 12/3/80)[10]

Loaned Empties P35,856.40 (as of 7/11/81)[11]

Quezon City Plant

Abigail Minimart

Regular Account P20,437.40 (as of 1980)[12]

Total P94,651.00

A reconciliation of petitioners' account was then conducted. The liability of petitioners as to the loaned empties (Muntinlupa plant, Nora Store) was reduced to P21,686.00 after a reevaluation of the value of the loaned empties.[13] Likewise, the amount of P5,631.00 under Invoice No. 85366, which was a spurious document, was deducted from their liability in their trade account with the Muntinlupa plant.[14] Thereafter, Eugenio and Isip signed the reconciliation sheets reflecting these items:

Muntinlupa Plant

Nora Store

Trade Account P32,726.20[15]

Loaned Empties P21,686.00[16]

Quezon City Plant

Abigail Minimart

Trade Account P20,437.20[17]

Total P74,849.40

After the meeting, private respondent alleged that petitioner Alfredo Y. Eugenio requested that he be allowed to retire and the existing accounts be deducted from his retirement pay, but that he later withdrew his retirement plan. Said petitioner disputed that allegation and, in fact, he subsequently filed a complaint for illegal dismissal. The finding of the labor arbiter, later affirmed by the Supreme Court, showed that this petitioner was indeed illegally dismissed, and that he never filed an application for retirement. In fact, this Court made a finding that the retirement papers allegedly filed in the name of this petitioner were forged.[18] This makes two falsified documents sought to be foisted against petitioners.

With their aforesaid accounts still unpaid, petitioner Alfredo Y. Eugenio submitted to Atty. Rosario the aforementioned four TPRs. Thereafter, Atty. Rosario ordered Daniel Azurin, assistant personnel manager, to conduct an investigation to verify this claim of petitioners. According to Azurin, during the investigation on December 4, 1981, Estrada allegedly denied that he issued and signed the aforesaid TPRs.[19] He also presented a supposed affidavit which Estrada allegedly executed during that investigation to affirm his verbal statements therein. Surprisingly, however, said supposed affidavit is inexplicably dated February 5, 1982.[20] At this point, it should be noted that Estrada never testified thereafter in court and what he is supposed to have done or said was merely related by Azurin.

Now, on this point, respondent court disagreed with herein petitioners that the testimony on the alleged denial of Jovencio Estrada regarding his signatures on the disputed TPRs, as well as his affidavit dated February 5, 1982[21] wherein he affirmed his denial, are hearsay evidence because Estrada was not presented as a witness to testify and be cross-examined thereon. Except for the terse statement of respondent court that since petitioner Alfredo Eugenio was supposedly present on December 4, 1981, "(t)he testimony of Jovencio Estrada at the aforementioned investigation categorically denying that he issued and signed the disputed TPRs is, therefore, not hearsay,"[22] there was no further explanation on this unusual doctrinal departure.

The rule is clear and explicit. Under the hearsay evidence rule, a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in the Rules.[23] In the present case, Estrada failed to appear as a witness at the trial. It was only Azurin who testified that during the investigation he conducted, Estrada supposedly denied having signed the TPRs. It is elementary that under the measure on hearsay evidence, Azurin's testimony cannot constitute legal proof as to the truth of Estrada's denial. For that matter, it is not admissible in evidence, petitioners' counsel having seasonably objected at the trial to such testimony of Azurin as hearsay. And, even if not objected to and thereby admissible, such hearsay evidence has no probative value whatsoever.[24]

It is true that the testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.[25] Private respondent cannot, however, seek sanctuary in this exception to the hearsay evidence rule.

Firstly, the supposed investigation conducted by Azurin was neither a judicial trial nor an administrative hearing under statutory regulations and safeguards. It was merely an inter-office interview conducted by a personnel officer through an ad hoc arrangement. Secondly, a perusal of the alleged stenographic notes, assuming arguendo that these notes are admissible in evidence, would show that the "investigation" was more of a free-flowing question and answer type of discussion wherein Estrada was asked some questions, after which Eugenio was likewise asked other questions. Indeed, there was no opportunity for Eugenio to object, much less to cross-examine Estrada. Even in a formal prior trial itself, if the opportunity for cross-examination did not exist therein or if the accused was not afforded opportunity to fully cross-examine the witness when the testimony was offered, evidence relating to the testimony given therein is thereafter inadmissible in another proceeding, absent any conduct on the part of the accused amounting to a waiver of his right to cross-examine.[26]

Thirdly, the stenographer was not even presented to authenticate the stenographic notes submitted to the trial court. A copy of the stenographic report of the entire testimony at the former trial must be supported by the oath of the stenographer that it is a correct transcript of his notes of the testimony of the witness as a sine qua non for its competency and admissibility in evidence.[27] The supposed stenographic notes on which respondent corporation relies is unauthenticated and necessarily inadmissible for the purpose intended.

Lastly, although herein private respondent insinuated that Estrada was not presented as a witness because he had disappeared, no evidence whatsoever was offered to show or even intimate that this was due to any machination or instigation of petitioners. There is no showing that his absence was procured, or that he was eluded, through acts imputable to petitioners. In the case at bar, except for the self-serving statement that Estrada had disappeared, no plausible explanation was given by respondent corporation. Estrada was an employee of private respondent, hence it can be assumed that it could easily trace or ascertain his whereabouts. It had the resources to do so, in contradistinction to petitioners who even had to seek the help of the Public Attorney's Office to defend them here. Private respondent could not have been unaware of the importance of Estrada's testimony and the consequent legal necessity for presenting him in the trial court, through coercive process if necessary.

Obviously, neither is the affidavit of Estrada admissible; it is likewise barred as evidence by the hearsay evidence rule.[28] This is aside from the fact that, by their nature, affidavits are generally not prepared by the affiants themselves but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them.[29] The dubiety of that affidavit, as earlier explained, is further underscored by the fact that it was executed more than two months after the investigation, presumably for curative purposes as it were.

Now, the authenticity of a handwriting may be proven, among other means, by its comparison made by the witness or the court with writings admitted or treated as genuine by the party against whom the evidence is offered or proved to be genuine to the satisfaction of the judge.[30] The alleged affidavit of Estrada states "x x x that the comparison that was made as to the authenticity of the signature appearing in the TPRs and that of my signature showed that there was an apparent dissimilarity between the two signatures, xerox copy of my 201 File is attached hereto as Annex 'F' of this affidavit." [31] However, a search of the Folder of Exhibits in this case does not reveal that private respondent ever submitted any document, not even the aforementioned 201 File, containing a specimen of the signature of Estrada which the Court can use as a basis for comparison. Neither was any document containing a specimen of Estrada's signature presented by private respondent in the formal offer of its exhibits.[32]

Respondent court made the further observation that "Estrada was even asked by Atty. Azurin at said investigation to sign three times to provide specimens of his genuine signature." [33] There is, however, no showing that he did, but assuming that Estrada signed the stenographic notes, the Court would still be unable to make the necessary comparison because two signatures appear on the right margin of each and every page of the stenographic notes, without any indication whatsoever as to which of the signatures is Estrada's. The whole document was marked for identification but the signatures were not. In fact, although formally offered, it was merely introduced by the private respondent "in order to show that Jovencio Estrada had been investigated and categorically denied having collected from Abigail Minimart and denying having signed the receipts claimed by Alfredo Eugenio to be his payment," [34] and not for the purpose of presenting any alleged signature of Estrada on the document as a basis for comparison.

This is a situation that irresistibly arouses judicial curiosity, if not suspicion. Respondent corporation was fully aware that its case rested, as it were, on the issue of whether the TPRs were authentic and which issue, in turn, turned on the genuineness of Estrada's signatures thereon. Yet, aside from cursorily dismissing the non-presentation of Estrada in court by the glib assertion that he could not be found, and necessarily aware that his alleged denial of his signatures on said TPRs and his affidavit rendered the same vulnerable to the challenge that they are hearsay and inadmissible, respondent corporation did nothing more. In fact, Estrada's disappearance has not been explained up to the present.

The next inquiry then would be as to what exactly is the nature of the TPRs insofar as they are used in the day-to-day business transactions of the company. These trade provisional receipts are bound and given in booklets to the company sales representatives, under proper acknowledgment by them and with a record of the distribution thereof. After every transaction, when a collection is made the customer is given by the sales representative a copy of the trade provisional receipt, that is, the triplicate copy or customer's copy, properly filled up to reflect the completed transaction. All unused TPRs, as well as the collections made, are turned over by the sales representative to the appropriate company officer.[35]

According to respondent court, "the questioned TPR's are merely 'provisional' and were, as printed at the bottom of said receipts, to be officially confirmed by plaintiff within fifteen (15) days by delivering the original copy thereof stamped paid and signed by its cashier to the customer. x x x Defendants-appellants (herein petitioners) failed to present the original copies of the TPRs in question, showing that they were never confirmed by the plaintiff, nor did they demand from plaintiff the confirmed original copies thereof." [36]

We do not agree with the strained implication intended to be adverse to petitioners. The TPRs presented in evidence by petitioners are disputably presumed as evidentiary of payments made on the account of petitioners. There are presumptions *juris tantum* in law that private transactions have been fair and regular and that the ordinary course of business has been followed.[37] The role of presumptions in the law on evidence is to relieve

the party enjoying the same of the evidential burden to prove the proposition that he contends for, and to shift the burden of evidence to the adverse party. Private respondent having failed to rebut the aforesaid presumptions in favor of valid payment by petitioners, these would necessarily continue to stand in their favor in this case.

Besides, even assuming *arguendo* that herein private respondent's cashier never received the amounts reflected in the TPRs, still private respondent failed to prove that Estrada, who is its duly authorized agent with respect to petitioners, did not receive those amounts from the latter. As correctly explained by petitioners, "in so far as the private respondent's customers are concerned, for as long as they pay their obligations to the sales representative of the private respondent using the latter's official receipt, said payment extinguishes their obligations." [38] Otherwise, it would unreasonably cast the burden of supervision over its employees from respondent corporation to its customers.

The substantive law is that payment shall be made to the person in whose favor the obligation has been constituted, or his successor-in-interest or any person authorized to receive it. [39] As far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and his agent. [40] In fact, Atty. Rosario, private respondent's own witness, admitted that "it is the responsibility of the collector to turn over the collection." [41]

Still pursuing its ruling in favor of respondent corporation, the Court of Appeals makes the following observation:

"x x x Having allegedly returned 600 Fills to plaintiff's representative on May 6, 10, and 14, 1980, appellant-wife's Abigail Store must have received more than 1,800 cases of soft drinks from plaintiff before those dates. Yet the Statement of Overdue Account pertaining to Abigail Minimart (Exhs. 'D', 'D-1' to 'D-3') which appellant-husband and his representative Luis Isip signed on August 3, 1981 does not show more than 1,800 cases of soft drinks were delivered to Abigail Minimart by plaintiff's Quezon City Plant (which supposedly issued the disputed TPRs) in May, 1980 or the month before." [42]

We regret the inaccuracy in said theory of respondent court which was impelled by its sole and limited reliance on a mere statement of overdue amounts. Unlike a statement of account which truly reflects the day-to-day movement of an account, a statement of an overdue amount is only a summary of the account, simply reflecting the balance due thereon. A statement of account, being more specific and detailed in nature, allows one to readily see and verify if indeed deliveries were made during a specific period of time, unlike a bare statement of overdue payments. Respondent court cannot make its aforequoted categorical deduction unless supporting documents accompanying the statement of overdue amounts were submitted to enable easy and accurate verification of the facts.

A perusal of the statement of overdue accounts shows that, except for a reference number given for each entry, no further details were volunteered nor offered. It is entirely possible that the statement of overdue account merely reflects the outstanding debt of a particular client, and not the specific particulars, such as deliveries made, particularly since the entries therein were surprisingly entered irrespective of their chronological order. Obviously, therefore, one can not use the statement of overdue amounts as conclusive proof of deliveries done within a particular time frame.

Except for its speculation that petitioner Alfredo Y. Eugenio could have had easy access to blank forms of the TPRs because he was a former route manager no evidence whatsoever was presented by private respondent in support of that theory. We are accordingly intrigued by such an unkind assertion of respondent corporation since Azurin himself admitted that their accounting department could not even inform them regarding the persons to whom the TPRs were issued. [43] In addition, it is significant that respondent corporation did not take proper

action if indeed some receipts were actually lost, such as the publication of the fact of loss of the receipts, with the corresponding investigation into the matter.

We, therefore, reject as attenuated the comment of the trial court that the TPRs, which Eugenio submitted after the reconciliation meeting, "smacks too much of an afterthought." [44] The reconciliation meeting was held on August 4, 1981. Three months later, on November, 1981, petitioner Alfredo Y. Eugenio submitted the four TPRs. He explained, and this was not disputed, that at the time the reconciliation meeting was held, his daughter Nanette, who was helping his wife manage the store, had eloped and she had possession of the TPRs. [45] It was only in November, 1981 when petitioners were able to talk to Nanette that they were able to find and retrieve said TPRs. He added that during the reconciliation meeting, Atty. Rosario assured him that any receipt he may submit later will be credited in his favor, hence he signed the reconciliation documents. Accordingly, when he presented the TPRs to private respondent, Atty. Rosario directed Mr. Azurin to verify the TPRs. Thus, the amount stated in the reconciliation sheet was not final, as it was still subject to such receipts as may thereafter be presented by petitioners.

On the other hand, petitioners claimed that the signature of petitioner Nora S. Eugenio in Sales Invoice No. 85366, in the amount of P5,631.00 is spurious and should accordingly be deducted from the disputed amount of P74,849.40. A scrutiny of the reconciliation sheet shows that said amount had already been deducted upon the instruction of one Mr. Coloma, Plant Controller of Pepsi-Cola, Muntinlupa Plant. [46] That amount is not disputed by respondent corporation and should no longer be deducted from the total liability of petitioner in the sum of P74,849.40. Since petitioners had made a payment of P80,560.00, there was consequently an overpayment of P5,710.60.

All told, we are constrained to hold that respondent corporation has dismally failed to comply with the pertinent rules for the admission of the evidence by which it sought to prove its contentions. Furthermore, there are questions left unanswered and begging for cogent explanations why said respondent did not or could not comply with the evidentiary rules. Its default inevitably depletes the weight of its evidence which cannot just be taken in vacuo, with the result that for lack of the requisite quantum of evidence, it has not discharged the burden of preponderant proof necessary to prevail in this case.

WHEREFORE, the judgment of respondent Court of Appeals in C.A. G.R. CV No. 26901, affirming that of the trial court in Civil Case No. Q-34718, is ANNULLED and SET ASIDE. Private respondent Pepsi-Cola Bottling Company of the Philippines, Inc. is hereby ORDERED to pay petitioners Nora and Alfredo Eugenio the amount of P5,710.60 representing overpayment made to the former.

SO ORDERED.

Narvasa, C.J., (Chairman), and Puno, JJ., concur.

Mendoza, J., no part.

**** Also spelled "Abegail" or Abigael" in some parts of the records of the case.**

[1] Original Record, 1-3.

[2] Exhs. L, L-1, L-2, and L-3 for private respondent; Exhs. 1-4 for petitioners; Folder of Exhibits, 25-27.

[3] Exh. E-6; *ibid.*, 11.

[4] Original Record, 251.

- [5] Rollo, 39; Justice Celso L. Magsino, ponente; Justices Nathanael P. de Paño, Jr. and Abelardo M. Dayrit, concurring.
- [6] Original Record, 269; per Judge Oscar L. Leviste.
- [7] Rollo, 109; penned by Justice Alicia V. Sempio-Diy, with the concurrence of Justices Vicente V. Mendoza and Regina G. Ordoñez-Benitez.
- [8] Rollo, 116.
- [9] Exh. A, Folder of Exhibits, 1.
- [10] Exhs. B, B-1; *ibid.*, 3-4.
- [11] Exhs. C, C-1; *ibid.*, 5-6.
- [12] Exhs. D, D-1 to D-3; *ibid.*, 7-10.
- [13] Exh. F-1; *ibid.*, 1-12.
- [14] Exh. E-6; *ibid.*, 11.
- [15] Exh. E-2; *ibid.*, 11.
- [16] Exh. F-1; *ibid.*, 12.
- [17] Exh. E-1; *ibid.*, 11.
- [18] TSN, May 6, 1984, 16.
- [19] *Ibid.*, April 5, 1984, 6; TSN, July 12, 1984, 5-6, 8-9.
- [20] *Ibid.*, July 12, 1984.
- [21] Exh. J, Folder of Exhibits, 19.
- [22] Rollo, 96.
- [23] Sec. 36, Rule 130, Rules of Court.
- [24] *People vs. Valero*, L-45283-84, March 19, 1982, 112 SCRA 661; 3 *Jones on Evidence*, 2nd Ed., 745.
- [25] Sec. 47, Rule 130, Rules of Court.
- [26] 20 Am. Jur., Evidence 586; see also *People vs. Ola*, L-47147, July 3, 1987, 152 SCRA 1.
- [27] 20 Am. Jur., Evidence 595-597.
- [28] *Paa vs. Chan*, L-25945, October 31, 1967, 21 SCRA 753; see also *People vs. Alacar, et al.*, 211 SCRA 580.
- [29] *People vs. Briosos, et al.*, L-28482, January 30, 1971, 37 SCRA 336.
- [30] Sec. 22, Rule 132, Rules of Court; see also *Underhill's Criminal Evidence*, 5th Ed., Vol. 11, 805-808.
- [31] Exhibit J, Fn 21.
- [32] Original Record, 166-168.
- [33] Rollo, 96.

- [34] Formal Offer of Exhibits, 3; Original Record, 168.
- [35] TSN, January 17, 1985, 7-8; TSN, May 10, 1984, 16-18.
- [36] Rollo, 97.
- [37] Sec. 3 (p) and (q), Rule 131, Rules of Court.
- [38] Rollo, 14.
- [39] Art. 1240, Civil Code.
- [40] Art. 1900, id.
- [41] TSN, May 10, 1984, 15.
- [42] Rollo, 97.
- [43] TSN, January 17, 1985, 9.
- [44] Original Record, 268.
- [45] TSN, October 31, 1985, 11.
- [46] Exhibit E-6, Folder of Exhibits, 11; TSN, May 10, 1984, 13-14.

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