

PSCFC FINANCIAL CORPORATION (NEW PSCFC BUSINESS CORPORATION), PETITIONER, VS. COURT OF APPEALS, HON. HERMINIO I. BENITO, PRESIDING JUDGE, RTC, BR. 132, MAKATI, METRO MANILA, NOT...

G.R. No. 106094. December 28, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

At issue in this petition for review is whether a request for admission directed to an adverse party under Sec. 1, Rule 26, of the Rules of Court may be answered only by his counsel.

On 17 March 1988, petitioner PSC Financial Corporation (PSCFC) filed a complaint against private respondent Banco Filipino Savings and Mortgage Bank (Banco Filipino) for annulment of foreclosure proceedings and damages with the Regional Trial Court of Makati, Metro Manila, docketed as Civil Case No. 88-368.

Petitioner PSCFC alleges that as land developer it availed itself of the Home Financing Plan of Banco Filipino and borrowed from the latter the amount of P6,630,690.00 as "developer loan". As security, petitioner constituted a mortgage over several lots in Pasay City which properties were not yet sold at that time to third parties. It was agreed that under the Home Financing Plan, the "developer loan" would mature only after the lots shall have been subdivided and improved and then sold to third persons who would then be substituted as mortgagors to the extent of the loan value of the lots and houses bought by them. However, on 25 September 1987, without the loan having matured as none of the lots have been convey to buyers, such that the latter could now take the place of petitioner as mortgagors, the mortgage was extrajudicially foreclosed and a certificate of sale was executed in favor of private respondent Banco Filipino.

In their answer of 10 June 1988, private respondents admitted the loan of P6,630,690.00 for which petitioner had executed a promissory note secured by a real estate mortgage on the properties described in the complaint. However, they denied that petitioner had availed itself of Banco Filipino's Home Financing Plan, averring instead that under the promissory note and the contract of mortgage, the subject loan would fall due "1 year from date" or on 5 January 1986 and that upon default of petitioner, Banco Filipino could immediately foreclose the mortgage under Act No. 3135 as in fact it did, upon compliance with the legal requirements with respect to extrajudicial foreclosures.

On 21 June 1988, petitioner served upon Banco Filipino a written request for admission of the truth of certain matters set forth as follows:

"1. The plaintiff (PSCFC) x x x was x x x granted by you under your BF Home Financing Plan, on the security of mortgages constituted on the lands acquired, under the terms of which the developer loans, despite the contents of the covering promissory notes and security instruments, would mature only after the development of the acquired lands into residential subdivision and the resale of the x x x lots x x x to interested third parties who would then be substituted as mortgagors x x x x

"2. x x x in 1984, availing itself of your said Home Financing Plan, the plaintiff obtained from you a loan x x x of P6,630,690.00 for which it signed in your favor a promissory note on the security of a mortgage constituted on x x x lots, which were not then yet sold to any third person x x x x

"3. x x x on September ??, 1987, without the said loan having yet matured for the reason that none of the x x x lots had yet been the subject of sale to third persons such that substitution of the latter as mortgagors in your favor could not yet be had, a certificate of sale was executed by the Notary Public over the x x x lands in your favor."[1]

On 27 June 1988, petitioner received Banco Filipino's answer to its request for admission signed by its counsel, Atty. Philip Sigfrid A. Fortun. Counsel admitted, inter alia, petitioner's mortgage loan as well as the fact that Banco Filipino was engaged in land development loans. However, respondent denied that petitioner availed itself of the Home Financing Plan including the agreement that the maturity of the debt would depend on the resale of the mortgaged subdivision lots.

On 8 August 1988, petitioner made a second request for admission on respondent Banco Filipino impliedly objecting to the first reply having been made by its lawyer, Atty. Fortun, who was not even an attorney yet when Banco Filipino inaugurated its financing plan in February 1968 and therefore did not have personal knowledge of the financing scheme. The second request called on Banco Filipino to admit that it did not send a formal notice of its intention to foreclose the mortgage and that there was no publication of the notice of foreclosure in a newspaper of general circulation.

By way of response made 26 August and 4 November 1988, respondent Banco Filipino objected to the matters requested on the ground of irrelevancy and ?????ied all the rest. In its motion of 7 November 1988 petitioner asked the trial court for a ruling that the matters sought to be admitted in its second bid for admission should be considered as impliedly admitted when the answer was made by a lawyer who was not qualified to do so as he had no direct and personal knowledge of the matters sought to be admitted. In insisting that only a client could make a binding admission in discovery proceedings, petitioner cites *Koh v. IAC*.^[2] It even went to the extent of quoting in its petition, found on pages 15-16, certain paragraphs supposedly taken therefrom which are not actually found therein, except the last paragraph which states: "x x x x All the parties are required to lay their cards on the table so that justice can be rendered on the merits of the case."

In any case, the lower court was not persuaded, so that petitioner went to the Court of Appeals maintaining that there was a tacit admission of the matters included in its second request for admission as the answer thereto was signed only by Atty. Fortun who had no personality to do so.

The appellate court sustained the trial court; hence, this instant recourse.

Petitioner submits that the answer to the request for admission under Rule 26 should be made by the party himself and nobody else, not even his lawyer. Consequently, failure of respondent Banco Filipino, upon whom the call for admission was served, to render the required sworn statement would constitute an implied admission of the facts sought to be admitted. Thus, it must be the party itself who must respond to the request for admission and that a mere reply made and verified by its counsel alone is insufficient and contrary to the Rules and the intent behind recourse to modes of discovery.

The argument is untenable. Section 21 of Rule 138 states?

"SEC. 21. Authority of attorney to appear. - An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client x x x x"[3]

Petitioner has not shown that the case at bar falls under any of the recognized exceptions as found in Art. 1878 of the Civil Code which enumerates the instances when special powers of attorney are necessary, or in Rule 20 of the Rules of Court on pre-trial where the parties and their attorneys are both directed to appear before the court for a conference; so that for counsel to appear at the pre-trial in behalf of his client, he must clothe the former with an adequate authority in the form of a special power of attorney or corporate resolution.

Section 23 of Rule 138 provides that "(a)ttorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure x x x x"

Thus, when Rule 26 states that a party shall respond to the request for admission, it should not be restrictively construed to mean that a party may ????? engage the services of counsel to make the response in his behalf. Indeed, the theory of petitioner must not be taken seriously; otherwise, it will negate the principles on agency in the Civil Code,[4] as well as Sec. 23, Rule 138, of the Rules of Court.[5]

Nonetheless, even assuming arguendo that Atty. Philip Sigfrid Fortun overstepped his authority, it is only his client, respondent Banco Filipino, which has the prerogative to impugn his acts and not petitioner, the adverse party. Interestingly, Banco Filipino has not objected to the response made by its counsel in its behalf.

ACCORDINGLY, the Court Resolves to: (a) DENY the instant petition for utter lack of merit; and, (b) REQUIRE counsel for petitioner, ATTY. LUTGARDA C. BAQUIRAN-PERALTA, of the BALGOS & PEREZ LAW OFFICE, 5th Floor, Corinthian Plaza, Paseo de Roxas, Makati, Metro Manila, to SHOW CAUSE within ten (10) days from notice hereof why she should not be administratively dealt with for misquoting the text of the decision in Koh v. IAC, supra, to support her position and attain a favorable judgment for her client.

SO ORDERED.

Cruz, (Chairman), Padilla, and Griño-Aquino, JJ., concur.

[1] Quoted in CA Decision, pp. 3-4; Rollo, pp. 30-31.

[2] G.R. No. 71388, 23 September 1986, 144 SCRA 259.

[3] See Mercado v. Ubay, No. L-35830, 24 July 1990, 187 SCRA 719.

[4] Art. 1868, et seq.

[5] Villa Rhecar Bus v. De La Cruz, G.R. No. 78936, 7 January 1988, 157 SCRA 13.

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