

MERCEDES N. ABELLA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND CONRADO COLARINA, RESPONDENTS.*G.R. No. 107606. June 20, 1996*

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-107606/>**FRANCISCO, J.:**

On May 26, 1987, petitioner Mercedes N. Abella, as lessor, and private respondent Conrado Colarina, as lessee, signed a contract of lease^[1] of a portion of Juanabel Building situated at Elias Angeles Street, Naga City. The duration of the contract is from "July 1, 1987 until July 1, 1991"^[2] or for a term of four (4) years^[3] with a stipulated monthly rental of Three Thousand Pesos (P3,000.00).^[4] Upon the signing of the contract, Colarina paid an amount of Forty Thousand Pesos (P40,000.00) to Abella which the latter acknowledged by issuing the corresponding receipt.^[5] Intending to use the premises for his pawnshop business, Colarina introduced thereon certain improvements^[6] for which he spent Sixty Eight Thousand Pesos (P68,000.00). Colarina paid the monthly rental on a regular basis but discontinued payment from November 1987 to April 1988.^[7] Thereafter, Abella then made repeated demands to pay with notice of extrajudicial rescission pursuant to paragraph thirteen (13)^[8] of the lease contract which were all unheeded. Thus, Abella took possession of the premises on May 1, 1988, with the assistance of the Naga City PNP and some Barangay officials^[9] who made an inventory^[10] of all the items found therein.

On May 5, 1988, Colarina filed an action for "enforcement of contract of lease with preliminary mandatory injunction and damages"^[11] against Abella before the Regional Trial Court (RTC) of Naga. After trial, the lower court among others ordered: (1) Abella to return the amount of Forty Thousand Pesos (P40,000.00) less Eighteen Thousand Pesos (P18,000.00) representing unpaid rental from November-December, 1987, to April, 1988 or for a period of six (6) months, or the sum of TWENTY TWO THOUSAND Pesos (P22,000.00) to Colarina together with the destroyed and removed materials and improvements introduced by him in the premises lease; and (2) the dismissal of the case for lack of merit.^[12]

On appeal, the respondent Court of Appeals reversed the decision of the trial court and ordered petitioner Abella: (1) to restore to Colarina the possession of the leased premises under the same terms and conditions stated in the contract of lease; (2) to restore in the premises the improvements introduced by Colarina which were demolished or removed by Abella or to pay the value thereof in the sum of P68,000.00, with interest until fully paid; and (3) to pay the costs of the suit.^[13] Aggrieved, Abella filed this petition for review on certiorari faulting the respondent Court of Appeals with five assigned errors which basically dwell on the following issues, to wit: (1) whether or not respondent Colarina violated the contract of lease warranting its extrajudicial rescission; and (2) whether or not possession of the premises may properly be restored to Colarina.

Anent the first issue. It is not disputed that petitioner received the sum of forty thousand pesos (P40,000.00) from Colarina.^[14] Petitioner and Colarina, however, are at loggerheads with respect to the purpose of such payment. The trial court agreed with the petitioner that the amount represents only a "goodwill money" given to the latter by Colarina in payment for the privilege to occupy the vacant portion of Juanabel Building.^[15] On the other

hand, the respondent Court of Appeals sided with Colarina and held that the same is an "advance deposit to answer for any rental which Colarina may fail to pay." [16] We uphold the findings of the respondent Court of Appeals.

Our careful review of the record reveals that Colarina did not violate the subject contract of lease with respect to his rental obligation in view of his payment of forty thousand pesos. Reproduced hereunder are the contents of the receipt acknowledging the acceptance by the petitioner of the said amount of forty thousand pesos:

"RECEIVED FROM MR. CONRADO O. COLARINA THE SUM OF FORTY THOUSAND PESOS (P40,000.00) AS ADVANCED DEPOSIT, TO ANSWER FOR ANY RENTAL WHICH MR. CONRADO COLARINA MAY FAIL TO PAY DURING THE TERM OF THE LEASE AS PER CONTRACT, DATED 26TH DAY OF MAY, 1987 NOTARIZED BEFORE NOTARY PUBLIC OSCAR VILLAMORA, DOC. NO. 398; PAGE NO. 80; BOOK NO. 9, SERIES OF 1987, THIS 26TH DAY OF MAY, 1987, AT NAGA CITY. (Italics supplied.)

(Sgd.) MERCEDES N. ABELLA" [17]

It is a cardinal rule in the interpretation of contracts that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." [18] The above-quoted receipt is clear and unequivocal that the disputed amount is an advance deposit which will answer for any rental that Colarina may fail to pay. No amount of extrinsic aids are required and no further extraneous sources are necessary in order to ascertain the parties' intent, determinable as it is, from the receipt itself. [19]

We are thus, more convinced that the receipt expresses truly the parties' intent on the purpose of said payment as against the oral testimony of the petitioner that said amount is but only a "goodwill money." Without any doubt, oral testimony as to a certain fact, depending as it does exclusively on human memory, is not as reliable as written or documentary evidence. [20] "I would sooner trust the smallest slip of paper for truth," said Judge Limpin of Georgia, "than the strongest and most retentive memory ever bestowed on mortal man." [21]

This is especially true in this case where such oral testimony is given by the petitioner himself, a party to the case who has an interest in its outcome, and by Jesus Hipolito, a witness who claimed to have received a commission from the petitioner. [22] In addition, the trial court itself has found that this receipt is genuine when it brushed aside the petitioner's claim that her signature appearing thereon was a forgery. [23] The authenticity of the receipt further enhances its probative value as against the oral testimony of the petitioner and of her witness.

We also find unmeritorious petitioner's contention that the receipt failed to reflect her true intention warranting a reformation thereof. Petitioner, being of age and a businesswoman, is presumed to have acted with due care and to have signed and receipt in question with full knowledge of its contents and import. [24] Equally unmeritorious is petitioner's insistence that Colarina procured her signature "thru fraud and any other deceitful means," [25] an issue which was never raised below. It is a settled rule that an issue which was not threshed out below may not be raised for the first time on appeal. Moreover, no iota of evidence was ever adduced at the trial to support her allegation of fraud. The reformation of said receipt simply lacks basis.

Hence, we rule that respondent Colarina was not yet in arrears with his rental payment when petitioner took possession of the leased premises on May 1, 1988. Accordingly, petitioner's rescission of the subject contract of lease was improper.

The second issue, however, has been rendered moot and academic by the time expiration of the term of the subject contract of lease on July 1, 1991. [26] Colarina, therefore, has no more right to be restored to the possession of the leased premises, said right being coterminous with the term of the contract.

WHEREFORE, the decision of the Court of Appeals is MODIFIED. Petitioner Mercedes N. Abella is hereby ordered to:

1. return to private respondent Conrado Colarina the amount of Forty Thousand Pesos (P40,000.00) less Eighteen Thousand Pesos (P18,000.00) (unpaid rental from November, 1987 to April, 1988 or for a period of six [6] months), or the sum of TWENTY TWO THOUSAND Pesos (P22,00.00);
2. pay private respondent Colarina the sum of Sixty Eight Thousand Pesos (P68,000.00), representing the value of the improvements demolished, with legal interest reckoned from May 1, 1988, the date when petitioner took possession of the premises, until fully paid.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Annex "A-1", Rollo, pp. 40-42.

[2] Id., p. 40.

[3] Both the RTC-Naga and the Court of Appeals' decisions stated five (5) years.

[4] Annex "A-1", supra, at p. 40.

[5] Annex "A-2"; Rollo, p. 43.

[6] Construction of mezzanine, toilet, installation of telephone lines and electric lights; Rollo, p. 77.

[7] Id; Rollo, p. 77.

[8] 13. That violation of LESSEE and/or their agents and employees of any terms and conditions, rules and regulations in this contract or promulgated by the LESSOR shall automatically cancel this contract without the need for any previous demand or notice or any court action for rescission or ejectment, and the LESSOR and/or her agents and employees shall have the right to enter, take immediate possession of, secure and/or padlock the premises leased and to exclude LESSEE, their agents and employees, etc. therefrom, and to retain the contents thereof, including furnitures, equipment, utensils, goods, stocks, personal belongings, appliances, x x x.

[9] Petition, p. 5, Rollo, p. 11.

[10] Exhibit 9.

[11] Annex "A"; Rollo, pp. 36-39.

[12] Decision dated April 1, 1991, RTC-Naga Branch 25, Presided by Judge Jose D. Pajarillo, p. 8; Rollo, p. 65.

[13] Decision promulgated on September 30, 1992, Court of Appeals, First Division, penned by Associate Justice Jainal D. Rasul with Justices Emeterio C. Cui and Segundino G. Chua, concurring p. 6-7; Rollo, p. 80-81.

[14] Pre-trial Order dated August 31, 1989, p. 1; Rollo, p. 56.

[15] RTC Decision, supra, at p. 63; Petition, supra, at p. 16.

[16] Court of Appeals Decision, supra, at p. 79.

[17] Annex "A-2"; Rollo, p. 43.

[18] Article 1370, Civil Code of the Philippines; Syquia v. Court of Appeals, 217 SCRA 624 (1993); Lufthansa

German Airlines vs. Court of Appeals, 208 SCRA 708 (1992); Cachola, Jr. v. Court of Appeals, 208 SCRA 496 (1992).

[19] Honrado, Jr. v. Court of Appeals, 198 SCRA 326 (1991).

[20] See De Leon v. Court of Appeals, 205 SCRA 612 (1992).

[21] Miller v. Cotten, 5 Ga. 341, 349.

[22] Petition, *supra*, at p. 19.

[23] RTC Decision, *supra*, at p. 64.

[24] See BA Finance Corporation v. Intermediate Appellate Court, 217 SCRA 261 (1993); Sierra v. Court of Appeals, 211 SCRA 785 (1992); Tan Tua Sia v. Yu Biao Santua, 56 Phil. 707 (1932).

[25] Memorandum for the Petitioner, p. 15; Rollo, p. 127.

[26] Annex "A-1"; *supra*, at p. 40.

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