

**MAUNLAD SAVINGS & #038; LOAN ASSOCIATION, INC., PETITIONER,
VS. THE HON. COURT OF APPEALS AND VICTOR T. NUBLA,
RESPONDENTS.**

G.R. No. 114942. November 27, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] and the Resolution[2] of the Court of Appeals dated July 9, 1993 and April 4, 1994, respectively, reversing, for having been issued with grave abuse of discretion, the Orders of the Regional Trial Court of Binangonan, Rizal, Branch 68 dated September 18, 1992[3] and February 12, 1993[4] in Civil Case No. 212-B which denied private respondent Victor T. Nubla's motion to admit amended answer and motion for submission of petitioner Maunlad Savings & Loan Association, Inc.'s (hereafter, Maunlad Savings) documents marked as defense evidence by private respondent.

The facts are as follows:

On August 27, 1986, petitioner Maunlad Savings instituted a complaint[5] for sum of money against private respondent Victor T. Nubla and Vicente Nubla on the basis of a promissory note[6] allegedly executed by the Nublas on May 4, 1984 to secure a loan amounting to P700,000.00 which, upon maturity on May 4, 1985 and despite repeated demands, the Nublas failed to pay and continuously defaulted, and which as of the final demand letter on July 24, 1986 amounted to P1,290,786.00, inclusive of interests and penalties.

The Nublas filed their Answer[7] admitting that they executed the promissory note but denied any liability thereunder, alleging that they did not receive any value out of the transaction nor did the said document reflect the real agreement between the parties inasmuch as the transaction sued upon was actually the obligation of Ever-Realty and Development Corporation (hereafter, Ever-Rise). However, the said Answer was not under oath.

Following the pre-trial conference, petitioner Maunlad Savings presented its evidence relying on the admission by the Nublas of the genuineness and due execution of the subject promissory note inasmuch as their answer was not under oath as required by Section 8, Rule 8[8] of the Rules of Court. Aurea del Rosario, petitioner's Account Officer, testified on August 19, 1987 and produced in open court the Offering Ticket stipulating the material agreements of the loan transaction. Upon the request of the counsel for the Nublas, the offering ticket was marked as their Exhibit "1". Another witness, Noli T. Lipio, testified on October 19, 1987 and presented a Deed of Assignment which showed that Maunlad applied the proceeds of the loan to another account. This deed of assignment was marked as Exhibit "3" for the Nublas. After the completion of the presentation of its evidence, it formally offered in evidence its documentary exhibits on December 1, 1987 and rested its case after the trial court admitted them on June 5, 1988.

On July 6, 1988, the Nublas commenced the presentation of their evidence. Private respondent Victor T. Nubla testified that the loan documents and the promissory note did not embody the real agreement of the parties because they signed blank documents on the understanding that they were signing as representatives of Ever-Rise,

and not in their personal capacity. When cross-examined, private respondent Nubla maintained that he and his brother, Vicente Nubla signed the promissory note in blank. On redirect examination, private respondent Nubla testified that the loan documents and the promissory note were erroneous because Maunlad Savings, in filling up the blanks, did not include the name of Ever-Rise as principal obligor. The Nublas finally concluded their evidence on January 23, 1991, following the testimony of their third witness.

The Nublas then filed their Formal Offer of Documentary Exhibits dated May 2, 1991. At the same time, they also filed a motion for the remarking of their exhibits. The trial court granted the motion for remarking. The petitioner, through counsel, subsequently filed its objections to the offer of documentary exhibits which the trial court admitted notwithstanding the objections thereto of petitioner.

On August 8, 1991, private respondent filed his Memorandum. On October 15, 1991, petitioner Maunlad Savings filed a motion to submit the case for decision.

On March 24, 1992, the Nublas filed a Motion to Admit Amended Answer[9] seeking to introduced the following amendments, (1) the failure to type the name of Ever-Rise as the real obligor in the promissory note; (2) the failure to reflect in the loan documents that the Nublas were mere representatives of Ever-Rise; (3) the absence of any agreement that the Nublas made themselves personally liable for the obligation; and (4) the fact that P477,777.78 of the loan proceeds was not released either to Ever-Rise or the Nublas, but was applied to another account without the conformity of Ever-Rise or the Nublas. In seeking admission of their amended answer, the Nublas cite Section 5, Rule 10 of the Rules of Court which allows the amendment of pleadings to conform to the evidence.

The Nublas likewise filed a Motion for Submission of Plaintiff's (Maunlad Savings) Documents Marked by Defendants (the Nublas) as Their Evidence[10] after realizing that they failed to include in their Offer of Evidence the Offering Ticket and the Deed of Assignment earlier marked for the defense as Exhibits "1" and "3". Petitioner Maunlad Savings filed its opposition to the twin motions on May 22, 1992.

Both motions were denied by the trial court in an Omnibus Order dated September 18, 1992,[11] ratiocinating that the proposed amendment in the amended answer will ultimately change or alter the theory of the defense and thus cannot be allowed under Section 3, Rule 10 of the Rules of Court. Furthermore, with respect to the motion for submission of Maunlad Savings' documents marked by the Nublas as their evidence, the trial court held that, under Section 35, Rule 132[12] of the Rules of Court, the court cannot consider evidence not formally offered. The Nublas sought[13] reconsideration but the same was denied in a resolution[14] dated February 12, 1993.

Petitioner Nubla interposed a petition for certiorari, prohibition and mandamus[15] before the Court of Appeals contending that the trial court's denial of his twin motions amounted to grave abuse of discretion. Acting on the petition, the appellate court issued on July 9, 1993 its decision[16] reversing the challenged Orders, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant petition is hereby GRANTED and the orders dated September 18, 1992 and February 12, 1993 issued by the Regional Trial Court of Binangonan, Rizal, Branch 68 in Civil Case No. 212-B are declared NULL and VOID and set aside. The said Court is directed to: (1) admit the amended answer dated march 24, 1992; and (2) require the respondent to submit the Offering ticket and Deed of Assignment, earlier marked as Exhibits "1" and "3" for remarking as evidence for the defense; and (3) allow the supplemental formal offer of said documents as evidence for the defense.

No costs.

SO ORDERED."

Reconsideration of the above decision having been denied by the appellate court in a Resolution[17] dated April 4, 1994, petitioner Maunlad Savings interposed the instant petition anchored on the following assignment of errors:[18]

THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE HIGH PREROGATIVE WRIT OF CERTIORARI

THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE AMENDMENT OF THE PRIVATE RESPONDENT'S ANSWER TO THE COMPLAINT, AFTER HE HAD ALREADY FORMALLY OFFERED HIS EVIDENCE, ALLEGEDLY TO CONFORM TO THE EVIDENCE PRESENTED DURING THE TRIAL, WILL ALTER HIS DEFENSE, MUCH TO THE PREJUDICE OF THE PETITIONER-PLAINTIFF

THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE PRIVATE RESPONDENT SHOULD NOT BE ALLOWED TO REMARK HIS DOCUMENTARY EXHIBITS AFTER HE HAD ALREADY FORMALLY OFFERED THEM IN EVIDENCE

The petition, being devoid of merit, must fail.

Under Sec. 7, Rule 8[19] of the Rules of Court, when the cause of action is anchored on a document, the genuineness or due execution of the instrument shall be deemed impliedly admitted unless the defendant, under oath, specifically denies them, and sets forth what he claims to be the facts. Said rule should be read in conjunction with Sec. 9 of Rule 130[20] of the Revised Rules of Evidence which provides, in substance, that when the parties have reduced their agreement to writing they have made such writing the only repository and memorial of the truth, and whatever is not found in the writing must be understood to have been waived or abandoned,[21] unless he puts in issue that there is a mistake or imperfection in the writing, or that it does not express the true agreement of the parties, or that the agreement is invalid or that there is an intrinsic ambiguity in the writing.[22]

In the instant case, while the specific denial in the original answer was not under oath and thus gave rise to the implied admission of the genuineness and due execution of the contents of the promissory note, private respondent, thru his testimony, was able to put in issue and present parol evidence to controvert the terms of the promissory note, which are essentially the bedrock of his defense. The presentation of the contrariant evidence for and against imputations of genuineness and due execution undoubtedly cured, clarified or expanded, as the case may be, whatever defects in the pleadings or vagueness in the issues there might have been as presented in the original answer.[23]

The record shows that petitioner Maunlad Savings made no timely objection when private respondent introduced parol evidence to explain the circumstances behind the execution and issuance of the promissory note. The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent.[24] In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer,[25] otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.[26] Thus, the objections of petitioner Maunlad Savings on the hearing of October 12, 1998 and January 23, 1991[27] amounted to no more than a belated attempt to remedy its neglectful act of prior implied consent to the presentation of parol evidence on the terms of the agreement between the parties.

Hence, the amended answer should have been admitted by trial court, pursuant to Sec. 5, Rule 10, quoted below,

which allows amendments to conform to the evidence presented, thus:

Sec. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

Furthermore, it is settled that the trial court cannot just disregard evidence which would ordinarily be incompetent under the rules but has been rendered admissible by the failure of a party to object thereto. Thus:

x x x The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, expressly or by silence. In any case the option rests with him. Once admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded, if it had been objected to, nor to strike it out on its own motion.[28]

With respect to the Motion for Submission of Maunlad Savings' documents marked by the Nublas as their evidence, this Court agrees with the pronouncements of the appellate court that:[29]

On the matter of submission of the respondent association's documents marked by the defendants as their evidence, we find that, under the circumstances and considering their ramifications, this Court must allow a relaxation of the stringent requirements of the rules in order that substantial justice may be better served. The Offering Ticket and Deed of Assignment (marked as exhibits "1" and "3", respectively) were presented before the court by two of the respondent association's witnesses, namely" Ms. Aurea del Rosario on August 19, 1987; and Ms. Noli T. Lipio, on October 19, 1987. Clearly, these documents were duly identified by the said witnesses' testimonies which were duly recorded as part of the proceedings. While it may be that there was no verbatim recital of the contents of the two documents in the records of this case, the respondent court cannot totally disregard the fact that the Offering Ticket is a document which contains the material agreements between the parties. For a thorough and fair appreciation of the merits of this case, respondent court must study the stipulations in the Offering ticket so that the respective rights and obligations of the opposing parties can be determined. The respondent court cannot just pretend that the Offering Ticket does not exist even after it had been properly presented and identified, just because its contents were not incorporated in the records of the proceedings. The same goes for the Deed of Assignment which is the petitioner's proof that a sizable portion of the loan proceeds was released to a third party without the authority or consent of the Nublas or Ever-Rise Realty. Considering the not inconsiderable amount involved, should the stipulations in the Deed of Assignment prove to be conclusive, it would be a grave injustice to exclude the deed of assignment from the respondent court's consideration. Needless to say, the petitioner's defense rests on the stipulations contained in these two documents. A proper determination of the merits of this case therefore necessitates the admission and consideration of the two documents.

It may be argued that if the said documents are truly pivotal to the defense, the petitioner must suffer the consequences of his counsel's failure to make a formal offer of said documents as evidence for the defense. To our mind, however, the said counsel's failure may be considered excusable under the circumstances. In the first place, these documents are in the possession of the respondent association, as these were presented by the latter's witnesses. Had they been in the possession of the petitioner or his counsel, it would amount to gross and inexcusable negligence to fail to formally offer the same as evidence. Since these documents were never in the

possession of the defense, and considering the amount of time that has passed since their presentation, it is understandable that they were overlooked when the time came to offer evidence formally. Fortunately for the petitioner, the omission was discovered and a move to correct the same was made before a decision could be rendered.

The general aim of procedural law is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedural rules are created not to hinder or delay but to facilitate and promote the administration of justice.[30] Courts in the exercise of their functions, and in rendering decisions, must not be too dogmatic as to restrict itself to literal interpretations of words, phrases and sentences; a complete and holistic view must be taken in order to render a just and equitable judgment.[31] It is far better to dispose of the case on the merits which is a primordial end rather than on a technicality, if it be the case, that may result in injustice.[32] Considering that the instant case involves a sizable sum of money, the overriding consideration of a judgment based on the merits should prevail over the primordial interests of strict enforcement on matters of technicalities.

All premises considered, the Court is convinced that the respondent appellate court committed no error in reversing the challenged orders of the trial court.

WHEREFORE, the petition is hereby DENIED for lack of merit and the challenged decision and resolution dated July 9, 1993 and April 4, 1994, respectively, of the Court of Appeals in CA-G.R. SP No. 30344 are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.

Mendoza, J., no part, having concurred in the resolution of the Court of Appeals.

[1] Penned by Associate Justice Alfredo Marigomen and concurred in by Presiding Justice Serafin E. Camilon and Associate Justice Consuelo Ynares-Santiago (now Associate Justice of the Supreme Court), First Division, in CA-G.R. SP No. 30344, Rollo, pp. 34-45.

[2] Penned by Associate Justice Alfredo Marigomen and concurred in by Presiding Justice Vicente V. Mendoza and Associate Justice Consuelo Ynares-Santiago (now both Associate Justices of the Supreme Court), Former First Division, Rollo, p. 46.

[3] Penned by Judge Juan Q. Enriquez, Jr., Court of Appeals CA, Rollo, pp. 46-48.

[4] *Id.*, p. 54.

[5] *Id.*, pp. 23-27.

[6] *Id.*, p. 28.

[7] *Id.*, pp. 29-31.

[8] Section 8, Rule 8 of the Rules of Court provides:

Sec. 8. How to contest genuineness of such document. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection

of the original instrument is refused. (Emphasis supplied)

[9] Rollo, pp. 110-115.

[10] Rollo, pp. 116-118.

[11] See Note No. 3, *supra*.

[12] Should be read as Section 34 which provides:

Sec. 34. Offer of Evidence. The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[13] CA Rollo, pp.49-53.

[14] See Note No. 4, *supra*.

[15] CA Rollo, pp. 2-22.

[16] Rollo, pp. 34-45.

[17] Rollo, p. 46.

[18] Rollo, p. 12.

[19] See Note No. 8.

[20] Sec. 9. Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

[21] *Cruz v. Court of Appeals*, 192 SCRA 209, 217 [1990].

[22] *Republic v. Court of Appeals*, 296 SCRA 171, 181-182 [1998].

[23] *Bernardo, Sr. v. Court of Appeals*, 263 SCRA 660, 673 [1996]. See also *Mercader v. DBP*, G.R. No. 130699, May 12, 2000; *Bank of America v. American Realty Corporation*, G.R. No. 133876, December 29, 1999; *O'laco v. Co Cho Chit*, 220 SCRA 656 [1993]; *Jacinto v. Court of Appeals*, 198 SCRA 211 [1991]; *Pacific Banking Corporation v. Mendoza*, 168 SCRA 709 [1988]; *Northern Cement Corp. v. Intermediate Appellate Court*, 158 SCRA 408, 417 [1988]; *Co Tiamco v. Diaz*, 75 Phil 672 [1946].

[24] Section 36 of Rule 132 of the Rules on Evidence states:

Sec. 36. Objection. - Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefore shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.

[25] II F. Regalado, Remedial Law Compendium, 435 9(5[th] ed., 1988).

[26] Chua v. Court of Appeals, 301 SCRA356, 362 [1999] citing Abrenica v. Gonda, 34 Phil. 739 [1916]; Catuira v. Court of Appeals, 236 SCRA 398 [1994]; Son v. Son, 251 SCRA 556 [1995]; Quebral v. Court of Appeals, 252 SCRA 353 [1996].

[27] Rollo, pp. 18-22.

[28] Marella v. Reyes, 12 Phil. 1.

[29] Rollo, pp. 42-43.

[30] Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals, G.R. No. 126745, July 26, 1999.

[31] Tensorex Industrial Corporation v. Court of Appeals, G.R. No. 117925, October 12, 1999.

[32] Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals, supra. See also Oil and Natural Gas Commission v. Court of Appeals, G.R No. 114323, September 28, 1999.

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