RADIOWEALTH FINANCE COMPANY, PETITIONER, VS. SPOUSES VICENTE AND MA. SUMILANG DEL ROSARIO, RESPONDENTS.

G.R. No. 138739. July 06, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When a demurrer to evidence granted by a trial court is reversed on appeal, the reviewing court cannot remand the case for further proceedings. Rather, it should render judgment on the basis of the evidence proffered by the plaintiff. Inasmuch as defendants in the present case admitted the due execution of the Promissory Note both in their Answer and during the pretrial, the appellate court should have rendered judgment on the bases of that Note and on the other pieces of evidence adduced during the trial.

The Case

Before us is a Petition for Review on Certiorari of the December 9, 1997 Decision[1] and the May 3, 1999 Resolution[2] of the Court of Appeals in CA-GR CV No. 47737. The assailed Decision disposed as follows:

> "WHEREFORE, premises considered, the appealed order (dated November 4, 1994) of the Regional Trial Court (Branch XIV) in the City of Manila in Civil Case No. 93-66507 is hereby REVERSED and SET ASIDE. Let the records of this case be remanded to the court a quo for further proceedings. No pronouncement as to costs."[3]

The assailed Resolution denied the petitioner's Partial Motion for Reconsideration.[4]

The Facts

The facts of this case are undisputed. On March 2, 1991, Spouses Vicente and Maria Sumilang del Rosario (herein respondents), jointly and severally executed, signed and delivered in favor of Radiowealth Finance Company (herein petitioner), a Promissory Note[5] for P138,948. Pertinent provisions of the Promissory Note read:

> "FOR VALUE RECEIVED, on or before the date listed below, I/We promise to pay jointly and severally Radiowealth Finance Co. or order the sum of ONE HUNDRED THIRTY EIGHT THOUSAND NINE HUNDRED FORTY EIGHT Pesos (P138,948.00) without need of notice or demand, in installments as follows:
> P11,579.00 payable for 12 consecutive months starting on _____ 19__ until the amount of P11,579.00 is fully paid. Each installment shall be due every ____ day of each month. A late payment penalty charge of two and a half (2.5%) percent per month shall be added to each unpaid installment from due date thereof until fully paid.
>
> x x x x x x x x x

It is hereby agreed that if default be made in the payment of any of the installments or late payment charges thereon as and when the same becomes due and payable as specified above, the total principal sum then remaining

unpaid, together with the agreed late payment charges thereon, shall at once become due and payable without need of notice or demand.

x x x x x x x x x

If any amount due on this Note is not paid at its maturity and this Note is placed in the hands of an attorney or collection agency for collection, I/We jointly and severally agree to pay, in addition to the aggregate of the principal amount and interest due, a sum equivalent to ten (10%) per cent thereof as attorney's and/or collection fees, in case no legal action is filed, otherwise, the sum will be equivalent to twenty-five (25%) percent of the amount due which shall not in any case be less than FIVE HUNDRED PESOS (P500.00) plus the cost of suit and other litigation expenses and, in addition, a further sum of ten per cent (10%) of said amount which in no case shall be less than FIVE HUNDRED PESOS (P500.00), as and for liquidated damages."[6]

Thereafter, respondents defaulted on the monthly installments. Despite repeated demands, they failed to pay their obligations under their Promissory Note.

On June 7, 1993, petitioner filed a Complaint[7] for the collection of a sum of money before the Regional Trial Court of Manila, Branch 14.[8] During the trial, Jasmer Famatico, the credit and collection officer of petitioner, presented in evidence the respondents' check payments, the demand letter dated July 12, 1991, the customer's ledger card for the respondents, another demand letter and Metropolitan Bank dishonor slips. Famatico admitted that he did not have personal knowledge of the transaction or the execution of any of these pieces of documentary evidence, which had merely been endorsed to him.

On July 4, 1994, the trial court issued an Order terminating the presentation of evidence for the petitioner.[9] Thus, the latter formally offered its evidence and exhibits and rested its case on July 5, 1994.

Respondents filed on July 29, 1994 a Demurrer to Evidence[10] for alleged lack of cause of action. On November 4, 1994, the trial court dismissed[11] the complaint for failure of petitioner to substantiate its claims, the evidence it had presented being merely hearsay.

On appeal, the Court of Appeals (CA) reversed the trial court and remanded the case for further proceedings.

Hence, this recourse.[12]

Ruling of the Court of Appeals

According to the appellate court, the judicial admissions of respondents established their indebtedness to the petitioner, on the grounds that they admitted the due execution of the Promissory Note, and that their only defense was the absence of an agreement on when the installment payments were to begin. Indeed, during the pretrial, they admitted the genuineness not only of the Promissory Note, but also of the demand letter dated July 12, 1991. Even if the petitioner's witness had no personal knowledge of these documents, they would still be admissible "if the purpose for which [they are] produced is merely to establish the fact that the statement or document was in fact made or to show its tenor[,] and such fact or tenor is of independent relevance."

Besides, Articles 19 and 22 of the Civil Code require that every person must -- in the exercise of rights and in the performance of duties -- act with justice, give all else their due, and observe honesty and good faith. Further, the rules on evidence are to be liberally construed in order to promote their objective and to assist the parties in obtaining just, speedy and inexpensive determination of an action.

Issue

The petitioner raises this lone issue:

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> "The Honorable Court of Appeals patently erred in ordering the remand of this case to the trial court instead of rendering judgment on the basis of petitioner's evidence."[13]

For an orderly discussion, we shall divide the issue into two parts: (a) legal effect of the Demurrer to Evidence, and (b) the date when the obligation became due and demandable.

The Court's Ruling

The Petition has merit. While the CA correctly reversed the trial court, it erred in remanding the case "for further proceedings."

Consequences of a Reversal, on
Appeal, of a Demurrer to Evidence

Petitioner contends that if a demurrer to evidence is reversed on appeal, the defendant should be deemed to have waived the right to present evidence, and the appellate court should render judgment on the basis of the evidence submitted by the plaintiff. A remand to the trial court "for further proceedings" would be an outright defiance of Rule 33, Section 1 of the 1997 Rules of Court.

On the other hand, respondents argue that the petitioner was not necessarily entitled to its claim, simply on the ground that they lost their right to present evidence in support of their defense when the Demurrer to Evidence was reversed on appeal. They stress that the CA merely found them indebted to petitioner, but was silent on when their obligation became due and demandable.

The old Rule 35 of the Rules of Court was reworded under Rule 33 of the 1997 Rules, but the consequence on appeal of a demurrer to evidence was not changed. As amended, the pertinent provision of Rule 33 reads as follows:

> "SECTION 1. Demurrer to evidence.--After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."[14]

Explaining the consequence of a demurrer to evidence, the Court in Villanueva Transit v. Javellana[15] pronounced:

> "The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e., demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. The doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is granted by the trial court, and the order of dismissal is reversed on appeal, the movant losses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the

> insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence." (Underscoring supplied)

In other words, defendants who present a demurrer to the plaintiff's evidence retain the right to present their own evidence, if the trial court disagrees with them; if the trial court agrees with them, but on appeal, the appellate court disagrees with both of them and reverses the dismissal order, the defendants lose the right to present their own evidence.[16] The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage prolonged litigations.[17]

In the case at bar, the trial court, acting on respondents' demurrer to evidence, dismissed the Complaint on the ground that the plaintiff had adduced mere hearsay evidence. However, on appeal, the appellate court reversed the trial court because the genuineness and the due execution of the disputed pieces of evidence had in fact been admitted by defendants.

Applying Rule 33, Section 1 of the 1997 Rules of Court, the CA should have rendered judgment on the basis of the evidence submitted by the petitioner. While the appellate court correctly ruled that "the documentary evidence submitted by the [petitioner] should have been allowed and appreciated xxx," and that "the petitioner presented quite a number of documentary exhibits xxx enumerated in the appealed order,"[18] we agree with petitioner that the CA had sufficient evidence on record to decide the collection suit. A remand is not only frowned upon by the Rules, it is also logically unnecessary on the basis of the facts on record.

Due and Demandable Obligation

Petitioner claims that respondents are liable for the whole amount of their debt and the interest thereon, after they defaulted on the monthly installments.

Respondents, on the other hand, counter that the installments were not yet due and demandable. Petitioner had allegedly allowed them to apply their promotion services for its financing business as payment of the Promissory Note. This was supposedly evidenced by the blank space left for the date on which the installments should have commenced.[19] In other words, respondents theorize that the action for immediate enforcement of their obligation is premature because its fulfillment is dependent on the sole will of the debtor. Hence, they consider that the proper court should first fix a period for payment, pursuant to Articles 1180 and 1197 of the Civil Code.

This contention is untenable. The act of leaving blank the due date of the first installment did not necessarily mean that the debtors were allowed to pay as and when they could. If this was the intention of the parties, they should have so indicated in the Promissory Note. However, it did not reflect any such intention.

On the contrary, the Note expressly stipulated that the debt should be amortized monthly in installments of P11,579 for twelve consecutive months. While the specific date on which each installment would be due was left blank, the Note clearly provided that each installment should be payable each month.

Furthermore, it also provided for an acceleration clause and a late payment penalty, both of which showed the intention of the parties that the installments should be paid at a definite date. Had they intended that the debtors could pay as and when they could, there would have been no need for these two clauses.

Verily, the contemporaneous and subsequent acts of the parties manifest their intention and knowledge that the monthly installments would be due and demandable each month.[20] In this case, the conclusion that the installments had already became due and demandable is bolstered by the fact that respondents started paying installments on the Promissory Note, even if the checks were dishonored by their drawee bank. We are convinced neither by their avowals that the obligation had not yet matured nor by their claim that a period for payment

should be fixed by a court.

Convincingly, petitioner has established not only a cause of action against the respondents, but also a due and demandable obligation. The obligation of the respondents had matured and they clearly defaulted when their checks bounced. Per the acceleration clause, the whole debt became due one month (April 2, 1991) after the date of the Note because the check representing their first installment bounced.

As for the disputed documents submitted by the petitioner, the CA ruling in favor of their admissibility, which was not challenged by the respondents, stands. A party who did not appeal cannot obtain affirmative relief other than that granted in the appealed decision.[21]

It should be stressed that respondents do not contest the amount of the principal obligation. Their liability as expressly stated in the Promissory Note and found by the CA is "P13[8],948.00[22] which is payable in twelve (12) installments at P11,579.00 a month for twelve (12) consecutive months." As correctly found by the CA, the "ambiguity" in the Promissory Note is clearly attributable to human error.[23]

Petitioner, in its Complaint, prayed for "14% interest per annum from May 6, 1993 until fully paid." We disagree. The Note already stipulated a late payment penalty of 2.5 percent monthly to be added to each unpaid installment until fully paid. Payment of interest was not expressly stipulated in the Note. Thus, it should be deemed included in such penalty.

In addition, the Note also provided that the debtors would be liable for attorney's fees equivalent to 25 percent of the amount due in case a legal action was instituted and 10 percent of the same amount as liquidated damages. Liquidated damages, however, should no longer be imposed for being unconscionable.[24] Such damages should also be deemed included in the 2.5 percent monthly penalty. Furthermore, we hold that petitioner is entitled to attorney's fees, but only in a sum equal to 10 percent of the amount due which we deem reasonable under the proven facts.[25]

The Court deems it improper to discuss respondents' claim for moral and other damages. Not having appealed the CA Decision, they are not entitled to affirmative relief, as already explained earlier.[26]

WHEREFORE, the Petition is GRANTED. The appealed Decision is MODIFIED in that the remand is SET ASIDE and respondents are ordered TO PAY P138,948, plus 2.5 percent penalty charge per month beginning April 2, 1991 until fully paid, and 10 percent of the amount due as attorney's fees. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

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[1] Rollo, pp. 23-30. Promulgated by the Third Division composed of J. Ramon Mabutas Jr., ponente; JJ Emerito C. Cui, Division chairman, and Hilarion L. Aquino, member, both concurring.

[2] Rollo, p. 20. In this Resolution, J. Cui was replaced by J. Corona Ibay-Somera.

[3] Assailed Decision, p. 7; rollo, p. 29.

[4] Rollo, p. 20.

[5] Annex "C;" rollo, p. 31.

[6] Annex "C;" rollo, p. 31.

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[7] Rollo, pp. 32-34.

[8] Presided by Judge Inocencio D. Maliaman.

[9] Appellant's Brief before the CA, p. 4; rollo, p. 48.

[10] Rollo, pp. 37-38.

[11] Rollo, pp. 40-41.

[12] This case was deemed submitted for decision upon receipt by this Court on April 28, 2000 of the petitioner's Memorandum, signed by Atty. Allan B. Gepty of Singson Valdez & Associates. Respondents' Memorandum, signed by Atty. Eduardo V. Bringas of Romeo R. Bringas & Associates, was received earlier, on April 3, 2000.

[13] Memorandum for the Petitioner, p. 4; rollo, p. 96. Original written in capital letters.

[14] In the old Rules, the same provision is worded in Section 1 of Rule 35 as follows:

"SECTION 1. Effect of judgment on demurrer to evidence.--After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

[15] 33 SCRA 755, 761-762, June 30, 1970, per Zaldivar, J.

[16] Siayngco v. Costibolo, 27 SCRA 272, 284, February 28, 1969; Tison v. Court of Appeals, 276 SCRA 582, 599-600, July 31, 1997.

[17] Atun v. Nuñez, 97 Phil. 762, 765, October 26, 1955; Arroyo v. Azur, 76 Phil. 493.

[18] CA Decision, pp. 4-5; rollo, pp. 26-27.

[19] Respondents' Answer, p. 1; rollo, p. 35.

[20] Article 1371 of the Civil Code provides that "[i]n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

[21] Lagandaon v. Court of Appeals, 290 SCRA 330, May 21, 1998; Dio v. Concepcion, 296 SCRA 579, September 25, 1998. Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission, 286 SCRA 245, February 12, 1998; Philippine Tobacco Flue-Curing & Redrying Corporation v. National Labor Relations Commission, 300 SCRA 37, December 10, 1998; Quezon Development Bank v. Court of Appeals, 300 SCRA 206, December 16, 1998.

[22] There was a typographical error in the CA Decision. As reflected in the Promissory Note, the amount should be P138,948 not P130,948.

[23] CA Decision, p. 5; rollo, p. 27.

[24] Article 2226 of the Civil Code provides that "[l]iquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

[25] Law Firm of Raymuncdo A. Armovit v. CA, 202 SCRA 16, September 27, 1991, Pascual v. CA, 300 SCRA 214, December 16, 1998.

[26] See note 21.

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