

TERESITA E. VILLALUZ, PETITIONER, VS. ROLANDO R. LIGON, RESPONDENT.

G.R. NO. 143721. August 31, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review seeking the reversal of the Decision[1] of the Court of Appeals (CA) promulgated on October 1, 1999 and the Resolution[2] dated June 6, 2000 which denied petitioner's motion for reconsideration.

The facts are as follows:

Petitioner Teresita E. Villaluz (Villaluz) and respondent Rolando R. Ligon (Ligon) were engaged in several businesses. Sometime in 1987, Villaluz borrowed sums of money from Ligon secured by postdated checks amounting to P1,543,586.00 which later bounced for the reasons "Drawn Against Insufficient Funds/Account Closed." Demands were made on Villaluz but she failed to pay her debt prompting Ligon to institute criminal proceedings for violation of Batas Pambansa Blg. 22 before the Regional Trial Court (RTC) of Manila. During the hearing of said cases, Villaluz asked for the settlement of their controversy[3] and Ligon, as the First Party, and Villaluz, as the Second Party, executed a Memorandum of Agreement with the following terms:

WHEREAS, the SECOND PARTY is indebted to the FIRST PARTY in the amount of THREE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND AND TWO HUNDRED FIFTY TWO PESOS (P3,489,252.00) inclusive of interests, which indebtedness is now the subject of criminal cases now pending with the Regional Trial Court of Manila, Branch 40, and docketed as Criminal Cases Nos. 89-73195 to 213 for Violation of Batas Pambansa Blg. 22;

WHEREAS, out of the aforesaid obligation the SECOND PARTY has made a total payment of ONE HUNDRED SIXTY FIVE THOUSAND PESOS (P165,000.00) thereby leaving a balance of THREE MILLION THREE HUNDRED TWENTY FOUR THOUSAND AND TWO HUNDRED FIFTY TWO PESOS (P3,324,252.00);

WHEREAS, on account of the desire of the parties to settle the aforementioned cases amicably, the FIRST PARTY, by way of liberality, has agreed to condone the amount of ONE MILLION TWO HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED FIFTY TWO PESOS (P1,324,252.00) (sic) thereby reducing the indebtedness of the SECOND PARTY to the FIRST PARTY in the amount of TWO MILLION PESOS (P2,000,000.00);

WHEREAS, the SECOND PARTY has on the date of this instrument, paid the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) thereby further reducing the SECOND PARTY'S obligation to ONE MILLION NINE HUNDRED THOUSAND PESOS (P1,900,000.00);

WHEREAS, the SECOND PARTY has acknowledged her aforesaid total outstanding obligation of ONE MILLION NINE HUNDRED THOUSAND PESOS (P1,900,000.00) in favor of the FIRST PARTY and has

committed to pay the same on or before 31 December 1990;

WHEREAS, on account of the aforesaid settlement agreement, the FIRST PARTY has agreed to effect or cause the dismissal of the aforementioned criminal cases against the SECOND PARTY;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter set forth, the parties hereto hereby agree as follows:

- The FIRST PARTY hereby condones the amount of P1,324,252.00 from the total obligation of the SECOND PARTY;
- The SECOND PARTY hereby promises to pay her total outstanding obligation of P1,900,000.00 to the FIRST PARTY on or before 31 December 1990;
- In the event the SECOND PARTY is unable to pay her aforesaid obligation to the FIRST PARTY on or before the date above stipulated, then the amount as condoned in paragraph one (1) hereof shall be added back to the said obligation as stipulated in paragraph two (2) hereof, and the FIRST PARTY shall have the right to enforce collection of the entire amounts due and owing from the SECOND PARTY without need of further demand;
- The FIRST PARTY shall effect or cause the dismissal of the afore-mentioned criminal cases against the SECOND PARTY as soon as practicable, preferably on or before the next scheduled hearing of said cases.[4]

In accordance with said agreement, Villaluz issued a check dated December 31, 1990 in the amount of P1,900,000.00 which again bounced upon presentment for the reason that it was drawn against a closed account. Ligon made several demands on Villaluz but to no avail. Thus, Ligon, through his lawyer, sent Villaluz demand letters dated March 5, 1991 and July 1, 1991 which were allegedly duly received by her.[5]

Since no payment was made, Ligon instituted on April 2, 1992 a complaint against Villaluz with the RTC of Makati, Branch 134, for the recovery of P3,224,252.00[6] plus legal interest and attorney's fees.[7]

Upon failure of Villaluz and her counsel to appear at the pre-trial conference, the RTC declared Villaluz as in default and received Ligon's evidence ex-parte. The RTC rendered a decision on October 16, 1992, ordering Villaluz to pay the amount prayed for plus interest, P30,000.00 as attorney's fees, plus costs.[8] On November 23, 1992, Villaluz through counsel, filed a Motion for New Trial and a Motion to Admit Answer which were both granted by the court.[9]

Villaluz in her Answer alleged that: she is an illiterate and could not engage in any business alone; on several occasions Ligon offered imported goods in exchange for postdated checks to be encashed upon delivery; there were occasions when the imported goods were not delivered and yet her checks were not returned; she requested for an accounting but none was made; the B.P. Blg. 22 cases filed against her involving the total amount of P1,543,586.00 were provisionally dismissed because there was a need for accounting; efforts were then made to settle the case amicably until November 1990, when Ligon's lawyer succeeded in persuading her to sign a Memorandum of Agreement and to issue a check in the amount of P1,900,000.00; said Memorandum of Agreement does not express the true intent and agreement of the parties and the check for P1.9 M is null and void; she did not receive any demand for the enforcement of the Memorandum of Agreement nor for the payment of the check, thus the instant action is premature and plaintiff has no cause of action. Villaluz prayed that the complaint be dismissed and the Memorandum of Agreement and the check be declared null and void.[10]

Ligon presented evidence to support his complaint and, on March 9, 1994, filed a Motion for Issuance of Writ of Preliminary Attachment which Villaluz opposed. On May 5, 1994, Villaluz filed a Motion to Dismiss Case on the Ground of Forum Shopping and a Motion to Cite Atty. Paulino E. Cases, Jr. in Contempt of Court. The trial court

denied the said motions.[11]

On May 25, 1995, Villaluz filed before the RTC a Motion to Cancel Hearings pending the resolution of this Court of the issue in G.R. No. L-119865 entitled "Teresita Villaluz vs. Court of Appeals" where Villaluz questioned the validity of the reinstatement of the criminal cases against her which were provisionally dismissed. The trial court denied the motion to cancel hearings as well as her motion for reconsideration of the same.[12]

After the trial court ruled on Ligon's offer of exhibits, the case was set for hearing on August 29 and 31, 1995 which were reset to September 25 and 28, 1995 upon Villaluz's request. The September 25, 1995 hearing was also reset in view of the manifestation of the parties that they will settle the case amicably. On September 28, 1995, the parties agreed to reset the hearing to October 11 and 24, 1995. On October 11, 1995 the hearing was cancelled anew upon agreement of the parties. On October 24, 1995, the hearing was cancelled and reset to November 16, 23 and December 14, 1995 in view of the absence of Villaluz and her counsel. On November 10, 1995, Villaluz's counsel asked for the cancellation of the November and December settings and prayed that they be moved to January 1996. The hearings were reset to January 9 and 11, 1996, but Villaluz failed to appear on said dates. The husband of Villaluz asked for a resetting and the case was set anew to March 11, 14 and 19, 1996. Petitioner Villaluz and her counsel failed to appear on March 11, 1996 which prompted plaintiff Ligon's counsel to move that Villaluz be considered to have waived the presentation of her evidence and that the case be deemed submitted for decision. The motion was granted and on March 11, 1996, the trial court issued an order submitting the case for decision which order was received by counsel for Villaluz on March 15, 1996.[13]

On May 7, 1996, the RTC of Makati, Branch 134, rendered its decision, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay to the former the sum of P3,224,252.00 (sic) plus legal interest at the rate of 12% per annum from April 2, 1992 (date of filing of the complaint) until the full amount is paid; the sum of P50,000.00 as attorney's fees, and the costs of suit.[14]

Villaluz filed a motion for reconsideration dated May 23, 1996, stating that given the opportunity to testify, she will re-affirm the contents of her affidavit that was submitted in support of her Motion for New Trial, or in the alternative, she will formally offer the same.[15] This was denied by the RTC in its Order dated July 22, 1996.[16]

Villaluz went to the CA and claimed that the trial court erred: in not dismissing the case on the ground of forum shopping; in not granting the defendant the opportunity to present evidence in her behalf thereby depriving her of her fundamental right to due process; and in not considering the evidence already on record showing that the subject checks had no valid consideration.[17]

The CA denied the petition in its Decision dated October 1, 1999, ruling that the motion to dismiss on the ground of forum shopping should have been filed within the time for but before filing of an answer to the complaint or pleading asserting a claim, pursuant to Section 1(e), Rule 16 of the Rules of Court; that Supreme Court Administrative Circular No. 04-94 on Anti-Forum Shopping Rule was not yet existing at the time the instant case was filed; that Villaluz cannot claim denial of due process as she and her counsel failed to appear in the scheduled hearings and the fact that Villaluz failed to file a motion for reconsideration when the RTC considered the case submitted for decision is an indication that she slept on her right; and that the "Sinumpaang Salaysay" which she submitted in support of her motion for new trial cannot be taken into consideration as the same was not formally offered in evidence during trial.[18] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appealed decision (dated May 7, 1996) of the Regional Trial Court (Branch 134) in Makati City in Civil Case No. 92-914 is hereby AFFIRMED, with costs against the appellant.

SO ORDERED.[19]

Villaluz filed a motion for reconsideration which was denied by the appellate court in its Resolution dated June 6, 2000.[20]

Hence, the present petition raising the following issues:

- WHETHER OR NOT HEREIN RESPONDENT COMMITTED FORUM SHOPPING IN THIS CASE;
- IN THE ALTERNATIVE, ASSUMING THAT THERE WAS NO FORUM SHOPPING, WHETHER OR NOT PETITIONER WAS DEPRIVED OF HER FUNDAMENTAL RIGHT TO DUE PROCESS;
- IN THE FURTHER ALTERNATIVE, ASSUMING THAT THERE WAS NO FORUM SHOPPING AND THAT PETITIONER WAS NOT DEPRIVED OF DUE PROCESS, WHETHER OR NOT AN ERROR WAS COMMITTED IN NOT CONSIDERING THE EVIDENCE ALREADY ON RECORD SHOWING THAT THE SUBJECT MEMORANDUM OF AGREEMENT AND THE CHECKS HAD NO VALID CONSIDERATION AND ARE, THEREFORE, NULL AND VOID.[21]

As to the first issue raised, petitioner argues that: the respondent and the CA were not correct in stating that there is no forum shopping in this case since the prohibition against forum shopping only started with the issuance of Circular No. 28-91 as modified by Admin. Circular No. 04-94; forum shopping has already been prohibited in *Buan vs. Lopez*, 145 SCRA 34, which was promulgated on October 13, 1986 and in *Limpin vs. Intermediate Appellate Court*, 161 SCRA 83, promulgated on May 5, 1988;[22] petitioner did not immediately raise the defense of forum shopping since it was a matter of trial strategy; the defense of forum shopping may also be raised at any time because it is a matter of judicial policy intended to unclog the court dockets and to prevent litigants from abusing the court's processes; all the elements of *litis pendentia* which are also the elements of forum shopping, are present herein, i.e., the parties, the subject matter and the reliefs sought are the same; and the considerations for the execution of the Memorandum of Agreement were the same checks subject matter of the criminal cases; without said checks the Memorandum of Agreement would be null and void for want of consideration.[23]

Respondent in his Comment contends that: there is no forum shopping in the case at bar since the present case was filed with the trial court on April 2, 1992, before Revised Circular No. 28-91 and Admin. Circular No. 04-94 took effect; the instant case is a collection of sum of money which sprung from the violation of the Memorandum of Agreement between the petitioner and respondent, while Criminal Case Nos. 98-73195-213 entitled *People vs. Teresita Villaluz* pertain to violation of B.P. Blg. 22 which is a penal law; the said cases have different nature; there is also no identity of causes of action since the first case involves a personal civil action for collection of a sum of money whereas the second case is a criminal action wherein the State has interest.[24]

As to the second issue, petitioner claims that the CA should have been more lenient in allowing petitioner the opportunity to present her evidence especially considering that the delay in petitioner's presentation of evidence in court was due to the need for accounting and the efforts of the parties in trying to reach a settlement of the controversy.[25]

Respondent argues that: there were numerous postponements made by petitioner and her counsel and respondent did not object thereto to accommodate herein petitioner; it was only on March 11, 1996 that the counsel for the respondent moved that the petitioner be considered to have waived the presentation of her evidence which the trial court granted; despite receipt of the Order on March 15, 1996, granting respondent's motion, petitioner did not move to remedy said Order until it became final and executory; the failure of petitioner to file a Motion for Reconsideration of the Order dated March 11, 1996 closed the door for a possible reconsideration in her favor;

and petitioner ultimately waived her right to present evidence on her behalf. [26]

As to the third issue, petitioner claims that the CA erred in rejecting petitioner's plea to have her "Sinumpaang Salaysay" admitted which was favorably considered by the trial court and given evidentiary weight when petitioner's motion for new trial was granted; respondent never disputed the contents of the statement which is already part of the records of the case; and since the trial court considered some portions of the record, there is no valid reason not to appreciate the entire records including the statement since it would absolve her from any liability in this case.[27]

On the other hand, respondent contends that: the trial court did not commit any mistake in not taking into consideration said "Sinumpaang Salaysay" on the ground that said affidavit was only in support of the Motion for New Trial; and said affidavit cannot be considered by the trial court since the trial court may only consider what was formally offered to it.[28]

Ruling of the Court

Anent the first issue: Whether there is forum shopping in this case.

We agree with petitioner that the CA and respondent were mistaken in stating that there could be no forum shopping in this case since the case was filed prior to the effectivity of Admin. Circular No. 04-94 which required a certification of non-forum shopping.

Ligon filed the complaint for sum of money on April 2, 1992. While it is true that Admin. Circular No. 04-94, entitled, "Additional Requisites for Civil Complaints, Petitions and Other Initiatory Pleadings Filed in All Courts and Agencies, Other Than The Supreme Court and the Court of Appeals, to Prevent Forum Shopping on Multiple Filing of Such Pleadings," took effect on April 1, 1994, or about two years after the complaint of Ligon was filed with the RTC, Makati, the Court has condemned forum shopping even before the issuance of said Admin. Circular No. 04-94. The splitting of causes of action was proscribed[29] in the Limpin case cited by petitioner which was promulgated in 1988.

While petitioner is correct in stating that the rule against forum shopping existed even prior to the issuance of Admin. Circular No. 04-94, we find that, in the present case, respondent did not commit forum shopping.

There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion, other than by appeal or certiorari in another.[30] There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[31] It is an act of malpractice because it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets.[32]

To determine whether a party violated the rule against forum shopping, the most important question to ask is whether the elements of *litis pendentia* are present or whether a final judgment in one case will result to *res judicata* in another.[33] Otherwise stated, to determine forum shopping, the test is to see whether in the two or more cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[34]

Here, the two cases involved are the instant civil case for collection of sum of money where petitioner is the defendant, and the B.P. Blg. 22 cases where petitioner is the accused. Clearly, there is no identity of parties for in the criminal case, the plaintiff is the State with Ligon only as a complaining witness. In the case at bar, Ligon himself is the plaintiff.

There is also a difference in the causes of action. In the instant case, the cause of action is petitioner's breach of contract as embodied in the Memorandum of Agreement, while in the criminal case, it is the violation of B.P. Blg. 22.

There is also a difference in reliefs sought because in the civil case, what is sought is the enforcement of the terms in their Memorandum of Agreement, while in the criminal case, it is the punishment of the offense committed against a public law.

As we explained in *Go vs. Dimagiba*[35] civil liability differs from criminal liability. What is punished in the latter is not the failure to pay an obligation but the issuance of checks that subsequently bounced or were dishonored for insufficiency or lack of funds. The issuance of worthless checks is prohibited because of its deleterious effects on public interest and its effects transcend the private interest of the parties directly involved in the transaction and touches the interest of the community at large.[36] In the present civil case, no such transcendental public interest exists.

Finally, petitioner's argument on forum shopping must fail since she did not raise it at the first opportunity in the trial court. As noted by the respondent, petitioner only raised the issue of forum shopping two years after the institution of the civil case. If only for her failure to invoke such ground at the first opportunity in her motion to dismiss in the trial court, her appeal should have been given short shrift and denied outright.[37] Petitioner's claim that her failure to raise it in her motion to dismiss was a matter of trial strategy has no persuasive effect for it is well ensconced that "defenses and objections not pleaded in a motion to dismiss or in an answer are deemed waived" except the failure to state a cause of action or that the court has no jurisdiction.[38] Herein case does not fall within said exceptions.

Anent the second issue: Whether petitioner was denied due process by the trial court.

We have held that due process is satisfied as long as the party is accorded an opportunity to be heard.[39] The essence of due process is that a party is given a reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[40] Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded and the party can present its side or defend its interest in due course, there is no denial of due process.[41] Indeed, where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.[42] If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[43]

It cannot be said that petitioner Villaluz was not given her day in court. A judgment on default was set aside and her motion for new trial and motion to admit answer were granted by the trial court. After respondent Ligon's presentation of evidence, the case was set for the presentation of petitioner Villaluz's evidence. On three occasions, petitioner asked for the postponement of the hearings and was allowed by the court.[44] The hearings for October 24, 1995, January 9 and 11, 1996 were reset because of the absence of Villaluz and her counsel. It was only on March 11, 1996, after several postponements, that the trial court, upon motion of Ligon, finally resolved to submit the case for decision. While the Court notes that the hearing was also set for March 14 and 19, 1996, the fact that despite receipt by Villaluz on March 15, 1996 of the Order of the RTC dated March 11, 1996, submitting the case for decision, she did not file any motion for reconsideration thereof, such that the RTC issued its judgment against her on May 7, 1996. Thus, based on all the foregoing, petitioner is barred from claiming that she was denied due process of law.

Anent the third issue: Whether the trial court erred in not considering the affidavit of petitioner earlier submitted in the motion for new trial.

Petitioner submitted a "Sinumpaang Salaysay" stating that she is an illiterate and that sometime in 1990, Ligon's lawyer deceived her into signing a Memorandum of Agreement and in issuing a check for P1.9 M.[45] Petitioner argues that the "Sinumpaang Salaysay" which she submitted as an affidavit of merit in support of her motion for new trial should be considered as part of the records of the case even without formal offer of the same.

We do not agree. There is a need to formally offer affidavits before the courts to afford the opposing party the opportunity to ascertain or refute the veracity of the contents of such statements. Courts will only consider as evidence that which has not been formally offered. If an affidavit was never formally offered, it cannot be considered as evidence. If petitioner neglected to offer her affidavit in evidence, however vital it may be, she only has herself to blame.[46]

The rule is that a document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. It is necessary that a formal offer is made since judges are required to base their findings of fact and judgment only, and strictly, upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of a chance to examine the document and object to its admissibility. The appellate court will also have difficulty reviewing the documents not previously scrutinized by the court below. Indeed, the pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.[47]

In this case, while the motion for new trial was granted, it cannot be said that the contents of the affidavit attached thereto should be treated by the trial court as evidence for the petitioner as it was not formally offered during the trial on the merits.

We now come to the determination of the amount of money that is due respondent.

The trial court in its decision, as affirmed by the CA, explained that:

From the evidence adduced, there can be no doubt that the plaintiff has established the material allegations of the complaint by clear, convincing and competent evidence.

The terms and conditions of the "Memorandum of Agreement" are clear and unmistakable. The parties agreed that in case defendant failed to pay the sum of P1,900,000.00 on or before December 31, 1990, then the amount of P1,324,252.00 would be added to the principal account (P1,900,000.00) and the plaintiff "shall have the right to enforce collection of the entire amounts due and owing from the SECOND PARTY (defendant) without need of further demand."... (Emphasis supplied)

The "Memorandum of Agreement" has the force of law between the parties. From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which according to their nature, may be in keeping with good faith, usage and law...

Defendant's claim that she was merely persuaded to sign the "Memorandum of Agreement" and to issue the check in the amount of P1,900,000.00 is unavailing. It is presumed that a party, who signs a contract, had acted with due care and have signed the said contract with full knowledge of the import and the obligation she was assuming thereby. This presumption may not be overcome by the mere testimony of the obligor. To permit a party, when sued upon a contract, to admit that she signed it but to deny it expresses the agreement she had made, or to allow her to admit that she signed it solely on the verbal assurance that she would not be liable thereon, would destroy the value of all contracts. Indeed, it would be disastrous to give more weight and reliability to the self-serving testimony of a party bound by the contract than to the contents thereof.[48]

(citations omitted)

Harsh as its effects may be on petitioner, we cannot but agree with the findings of the trial court and the CA.

The Memorandum of Agreement between petitioner and respondent, while termed as such, is actually a compromise agreement which is defined as an agreement whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[49]

As in any other contract, it is perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which constitutes the contract.[50] It is perfected upon the meeting of the minds and does not need a judicial approval for its perfection.[51]

Here, petitioner claims that the Memorandum of Agreement is void since she is an illiterate who was taken advantage of by respondent's counsel.

Indeed, there exists a presumption of mistake or error to those who have not had the benefit of a good education under Art. 1332 of the Civil Code.[52] However, one who alleges such mistake or fraud must show that her personal circumstances warrant the application thereof.[53] Apart from claiming in her affidavit that she is illiterate, petitioner did not make any effort to prove in court the truthfulness of such claim, despite the many opportunities given her to do so. We therefore cannot give credence to her allegation.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Ramon Mabutas, Jr. and concurred in by Associate Justices Hilarion L. Aquino and Wenceslao I. Aguir, Jr., Rollo, pp. 32-43.

[2] Rollo, p. 45.

[3] Id., pp. 34-35.

[4] Records, pp. 6-7.

[5] Rollo, pp. 104-105.

[6] Should be P3,324,252.00, Records, p. 6.

[7] Rollo, pp. 32, 105.

[8] Id., p. 32.

[9] Id., p. 33.

[10] Ibid.

[11] Rollo, p. 34.

[12] Ibid.

[13] Rollo, p. 34; Records, p. 352.

[14] Records, p. 386.

- [15] Id., pp. 359-360.
- [16] Id., p. 389.
- [17] Rollo, p. 37.
- [18] Id., pp. 37-42.
- [19] Id., p. 43.
- [20] Id., p. 45.
- [21] Id., p. 73
- [22] Id., p. 19.
- [23] Id., pp. 19-22.
- [24] Id., pp. 53-54.
- [25] Id., p. 24.
- [26] Id., pp. 54-55.
- [27] Id., pp. 25-26.
- [28] Id., p. 55.
- [29] Limpin vs. Intermediate Appellate Court, *supra*, p. 98.
- [30] Rudecon Management Corp. vs. Singson, G.R. No. 150798, March 31, 2005.
- [31] Top Rate Construction & Gen. Services, Inc. vs. Paxton Development Corp. and Baikal Realty Corp., G.R. No. 151081, September 11, 2003, 410 SCRA 604, 605-606.
- [32] Id.
- [33] Young vs. Seng, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 638.
- [34] Id.
- [35] G.R. No. 151876, June 21, 2005.
- [36] Ibid.
- [37] Young vs. Seng, *supra*.
- [38] Sec. 2, Rule 9 of the Old Rules of Court, in effect at the time of the filing of the complaint, (now Sec. 1, Rule 9 under the 1997 Rules of Civil Procedure).
- [39] Bautista vs. Court of Appeals, G.R. No. 157219, May 28, 2004, 430 SCRA 353.
- [40] Air Phils. Corp. vs. International Business Aviation Services Phils., G.R. No. 151963, September 9, 2004, 438 SCRA 51.
- [41] Id.
- [42] Bautista vs. CA, *supra*.
- [43] Id.

[44] August 29 and 31, 1995 to September 25 and 28, 1995; November and December 1995 to January 1996; and January 1996 to March 1996; Rollo, p. 34.

[45] Records, pp. 58-59.

[46] Candido vs. Court of Appeals, G.R. No. 107493, February 1, 1996, 253 SCRA 78, 82.

[47] Candido vs. CA, *ibid.*

[48] CA Rollo, p. 29.

[49] Magbanua vs. Uy, G.R. No. 161003, May 6, 2005.

[50] AFP Mutual Benefit Association, Inc. vs. CA, G.R. No. 126745, July 26, 1999, 311 SCRA 143, 154.

[51] Sanchez vs. Court of Appeals, G.R. No. 108947, September 29, 1997, 279 SCRA 647, 675.

[52] Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.

[53] Leonardo vs. CA, G.R. No. 125485, September 13, 2004, 438 SCRA 201.

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