

CASENT REALTY DEVELOPMENT CORP., PETITIONER, VS. PHILBANKING CORPORATION, RESPONDENT.

G.R. No. 150731. September 14, 2007

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

On appeal to this Court through Rule 45 of the Rules of Court is the March 29, 2001 Decision[1] and November 7, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 63979 entitled *Philbanking Corporation v. Casent Realty Development Corporation*. The CA reversed the May 12, 1999 Order[3] of the Makati City Regional Trial Court (RTC), Branch 145 in Civil Case No. 93-2612, which granted petitioner's demurrer to evidence and dismissed the complaint filed by respondent.

The Facts

The facts according to the appellate court are as follows:

In 1984, petitioner Casent Realty Development Corporation executed two promissory notes in favor of Rare Realty Corporation (Rare Realty) involving the amounts of PhP 300,000 (PN No. 84-04) and PhP 681,500 (PN No. 84-05). It was agreed in PN No. 84-04 that the loan it covered would earn an interest of 36% per annum and a penalty of 12% in case of non-payment by June 27, 1985, while the loan covered by PN No. 84-05 would earn an interest of 18% per annum and 12% penalty if not paid by June 25, 1985.[4] On August 8, 1986, these promissory notes were assigned to respondent Philbanking Corporation through a Deed of Assignment.[5]

Respondent alleged that despite demands, petitioner failed to pay the promissory notes upon maturity such that its obligation already amounted to PhP 5,673,303.90 as of July 15, 1993. Respondent filed on July 20, 1993 a complaint before the Makati City RTC for the collection of said amount. In its Answer,[6] petitioner raised the following as special/affirmative defenses:

1. The complaint stated no cause of action or if there was any, the same was barred by estoppel, statute of frauds, statute of limitations, laches, prescription, payment, and/or release;
2. On August 27, 1986, the parties executed a *Dacion en Pago*[7] (*Dacion*) which ceded and conveyed petitioner's property in Iloilo City to respondent, with the intention of totally extinguishing petitioner's outstanding accounts with respondent. Petitioner presented a Confirmation Statement[8] dated April 3, 1989 issued by respondent stating that petitioner had no loans with the bank as of December 31, 1988.
3. Petitioner complied with the condition in the *Dacion* regarding the repurchase of the property since the obligation was fully paid. Respondent sent confirmation statements in the latter months of 1989, which showed that petitioner had no more outstanding loan; and
4. Assuming that petitioner still owed respondent, the latter was already estopped since in October 1988, it reduced its authorized capital stock by 50% to wipe out a deficit of PhP 41,265,325.12.[9]

Thus, petitioner, by way of compulsory counterclaim, alleged that it made an overpayment of approximately PhP 4 million inclusive of interest based on Central Bank Reference Lending Rates on dates of overpayment. Petitioner further claimed moral and exemplary damages and attorney's fee, amounting to PhP 4.5 million plus the costs of suit as a consequence of respondent's insistence on collecting.[10]

The parties failed to reach an amicable settlement during the pre-trial conference. Thereafter, respondent presented its evidence and formally offered its exhibits. Petitioner then filed a Motion for Judgment on Demurrer to the Evidence,[11] pointing out that the plaintiff's failure to file a Reply to the Answer which raised the Dacion and Confirmation Statement constituted an admission of the genuineness and execution of said documents; and that since the Dacion obliterated petitioner's obligation covered by the promissory notes, the bank had no right to collect anymore.

Respondent subsequently filed an Opposition[12] which alleged that: (1) the grounds relied upon by petitioner in its demurrer involved its defense and not insufficiency of evidence; (2) the Dacion and Confirmation Statement had yet to be offered in evidence and evaluated; and (3) since respondent failed to file a Reply, then all the new matters alleged in the Answer were deemed controverted.[13]

The trial court ruled in favor of petitioner and dismissed the complaint through the May 12, 1999 Order, the dispositive portion of which reads:

WHEREFORE, premises considered[,] finding defendant's Motion For Judgment On Demurrer To The Evidence to be meritorious[,] the same is hereby GRANTED. Consequently, considering that the obligation of the defendant to the plaintiff having been extinguish[ed] by a Dacion en Pago duly executed by said parties, the instant complaint is hereby DISMISSED, with prejudice. Without Cost.[14]

The Ruling of the Court of Appeals

On appeal, respondent alleged that the trial court gravely erred because the promissory notes were not covered by the Dacion, and that respondent was able to prove its causes of action and right to relief by overwhelming preponderance of evidence. It explained that at the time of execution of the Dacion, the subject of the promissory notes was the indebtedness of petitioner to Rare Realty and not to the "Bank"----the party to the Dacion. It was only in 1989 after Rare Realty defaulted in its obligation to respondent when the latter enforced the security provided under the Deed of Assignment by trying to collect from petitioner, because it was only then that petitioner became directly liable to respondent. It was also for this reason that the April 3, 1989 Confirmation Statement stated that petitioner had no obligations to respondent as of December 31, 1988. On the other hand, petitioner claimed that the Deed of Assignment provided that Rare Realty lost its rights, title, and interest to directly proceed against petitioner on the promissory notes since these were transferred to respondent. Petitioner reiterated that the Dacion covered all conceivable amounts including the promissory notes.[15]

The appellate court ruled that under the Rules of Civil Procedure, the only issue to be resolved in a demurrer is whether the plaintiff has shown any right to relief under the facts presented and the law. Thus, it held that the trial court erred when it considered the Answer which alleged the Dacion, and that its genuineness and due execution were not at issue. It added that the court a quo should have resolved whether the two promissory notes were covered by the Dacion, and that since petitioner's demurrer was granted, it had already lost its right to present its evidence.[16]

The CA found that under the Deed of Assignment, respondent clearly had the right to proceed against the promissory notes assigned by Rare Realty. Thus, the CA ruled, as follows:

WHEREFORE, premises considered, the Order dated May 12, 1999 of the Regional Trial Court, National

Capital Judicial Region, Branch 145, Makati City is hereby REVERSED and SET ASIDE.

Judgment is hereby entered ORDERING [petitioner] Casent Realty [Development] Corporation to:

- pay [respondent] Philbanking Corporation the amount of P300,000.00 with an interest of 36% per annum and a penalty of 12% for failure to pay the same on its maturity date, June 27, 1985 as stipulated in Promissory Note No. 84-04;
- pay [respondent] Philbanking Corporation the amount of P681,500.00 with an interest of 18% per annum and a penalty of 12% for failure to pay the same on its maturity date, June 25, 1985 as stipulated in Promissory Note No. 84-05; and
- pay [respondent] Philbanking Corporation, the amount representing 25% of total amount due as attorney's fee as stipulated in the promissory notes.

SO ORDERED.[17]

Petitioner filed a Motion for Reconsideration[18] which was denied by the CA in its November 7, 2001 Resolution.[19]

The Issues

WHETHER OR NOT THE COURT OF APPEALS ERRED IN EXCLUDING THE PETITIONER'S AFFIRMATIVE DEFENSES IN ITS ANSWER IN RESOLVING A DEMURRER TO EVIDENCE; AND

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE RESPONDENT

In other words, the questions posed by this case are:

- Does respondent's failure to file a Reply and deny the Dacion and Confirmation Statement under oath constitute a judicial admission of the genuineness and due execution of these documents?
- Should judicial admissions be considered in resolving a demurrer to evidence? If yes, are the judicial admissions in this case sufficient to warrant the dismissal of the complaint?

Petitioner asserts that its obligation to pay under the promissory notes was already extinguished as evidenced by the Dacion and Confirmation Statement. Petitioner submits that when it presented these documents in its Answer, respondent should have denied the same under oath. Since respondent failed to file a Reply, the genuineness and due execution of said documents were deemed admitted, thus also admitting that the loan was already paid. On the other hand, respondent states that while it failed to file a Reply, all the new matters were deemed controverted pursuant to Section 10, Rule 6 of the Rules of Court. Also, the loan which was covered by the Dacion refers to another loan of petitioner amounting to PhP 3,921,750 which was obtained directly from the respondent as of August 1986.[20] Furthermore, petitioner argued that assuming respondent admitted the genuineness and due execution of the Dacion and Confirmation Statement, said admission was not all-encompassing as to include the allegations and defenses pleaded in petitioner's Answer.

The Court's Ruling

The petition is partly meritorious.

Rule 33, Section 1 of the 1997 Rules of Civil Procedure provides:

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.

In *Gutib v. Court of Appeals*, we defined a demurrer to evidence as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue." [21]

What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the facts and the law. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. [22] However, the plaintiff's evidence should not be the only basis in resolving a demurrer to evidence. The "facts" referred to in Section 8 should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings. These include judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the only exclusion being the defendant's evidence.

Petitioner points out that the defense of Dacion and Confirmation Statement, which were submitted in the Answer, should have been specifically denied under oath by respondent in accordance with Rule 8, Section 8 of the Rules of Court:

Section 8. How to contest such documents.--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 the requirement of an oath 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.

Since respondent failed to file a Reply, in effect, respondent admitted the genuineness and due execution of said documents. This judicial admission should have been considered by the appellate court in resolving the demurrer to evidence. Rule 129, Section 4 of the Rules of Court provides:

Section 4. Judicial admissions.-----An admission, verbal or written, made by a party in the course of the proceeding in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

On appeal to the CA, respondent claimed that even though it failed to file a Reply, all the new matters alleged in the Answer are deemed controverted anyway, pursuant to Rule 6, Section 10:

Section 10. Reply.--A reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such new matters. If a party does not file such reply, all the new matters alleged in the answer are deemed controverted.

We agree with petitioner. Rule 8, Section 8 specifically applies to actions or defenses founded upon a written instrument and provides the manner of denying it. It is more controlling than Rule 6, Section 10 which merely provides the effect of failure to file a Reply. Thus, where the defense in the Answer is based on an actionable document, a Reply specifically denying it under oath must be made; otherwise, the genuineness and due execution of the document will be deemed admitted. [23] Since respondent failed to deny the genuineness and due execution of the Dacion and Confirmation Statement under oath, then these are deemed admitted and must be considered by the court in resolving the demurrer to evidence. We held in *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.* that "[w]hen the due execution and genuineness of an instrument are deemed admitted because of the adverse party's failure to make a specific verified denial thereof, the instrument need not be presented formally in evidence for it may be considered an admitted fact." [24]

In any case, the CA found that:

From the facts of the case, the genuineness and due execution of the Dacion en Pago were never put to issue. Genuineness merely refers to the fact that the signatures were not falsified and/or whether there was no substantial alteration to the document. While due execution refers to whether the document was signed by one with authority.[25]

The more important issue now is whether the Dacion and Confirmation Statement sufficiently prove that petitioner's liability was extinguished. Respondent asserts that the admission of the genuineness and due execution of the documents in question is not all encompassing as to include admission of the allegations and defenses pleaded in petitioner's Answer. In executing the Dacion, the intention of the parties was to settle only the loans of petitioner with respondent, not the obligation of petitioner arising from the promissory notes that were assigned by Rare Realty to respondent.

We AGREE.

Admission of the genuineness and due execution of the Dacion and Confirmation Statement does not prevent the introduction of evidence showing that the Dacion excludes the promissory notes. Petitioner, by way of defense, should have presented evidence to show that the Dacion includes the promissory notes.

The promissory notes matured in June 1985, and Rare Realty assigned these promissory notes to respondent through a Deed of Assignment dated August 8, 1986. The Deed of Assignment provides, thus:

Rare Realty Corporation, a corporation duly organized and existing in accordance with law, with office at 8th Floor Philbanking Building, Ayala Ave., Makati, Metro Manila (herein called Assignor) in consideration of the sum of THREE MILLION SEVEN HUNDRED NINETY THOUSAND & 00/100 pesos [PhP 3,790,000.00] and as security fee or in the payment of the sum, obtained or to be obtained as loan or credit accommodation of whatever form or nature from the [PHILBANKING] CORPORATION, with office at Ayala Ave., Makati, Metro Manila (herein called Assignee), including renewals or extensions of such loan or credit accommodation, now existing or hereinafter incurred, due or to become due, whether absolute or contingent, direct or indirect, and whether incurred by the Assignor as principal, guarantor, surety, co-maker, or in any other capacity, including interest, charges, penalties, fees, liquidated damage, collection expenses and attorney's fee, the Assignor hereby assigns, transfers and conveys to Assignee all its rights, title and interest in and to: (a) contracts under which monies are or will be due to Assignor, (b) moneys due or to be due thereunder, or (c) letters of credit and/or proceeds or moneys arising from negotiations under such credits, all which are herein called moneys or receivables assigned or assigned moneys or receivables, and are attached, or listed and described in the Attached Annex A (for contracts) or Annex B (for letters of credit).[26]

It is clear from the foregoing deed that the promissory notes were given as security for the loan granted by respondent to Rare Realty. Through the Deed of Assignment, respondent stepped into the shoes of Rare Realty as petitioner's creditor.

Respondent alleged that petitioner obtained a separate loan of PhP 3,921,750. Thus, when petitioner and respondent executed the Dacion on August 27, 1986, what was then covered was petitioner's loan from the bank. The Dacion provides, thus:

NOW, THEREFORE, in consideration of the foregoing premises, the DEBTOR hereby transfers and conveys in favor of the BANK by way of Dacion en Pago, the above-described property in full satisfaction of its outstanding indebtedness in the amount of P3,921,750.00 to the BANK, subject to x x x terms and conditions.[27] (Emphasis supplied.)

The language of the Dacion is unequivocal--the property serves in full satisfaction of petitioner's own

indebtedness to respondent, referring to the loan of PhP 3,921,750. For this reason, the bank issued a Confirmation Statement saying that petitioner has no unpaid obligations with the bank as of December 31, 1988.

In 1989, however, Rare Realty defaulted in its payment to respondent. Thus, respondent proceeded against the security assigned to it, that is, the promissory notes issued by the petitioner. Under these promissory notes, petitioner is liable for the amount of PhP 300,000 with an interest of 36% per annum and a penalty of 12% for failure to pay on the maturity date, June 27, 1985; and for the amount of PhP 681,500 with an interest of 18% per annum and a penalty of 12% for failure to pay on the maturity date, June 25, 1985.

WHEREFORE, the March 29, 2001 Decision and November 7, 2001 Resolution of the CA are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 79-87. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Romeo A. Brawner and Rebecca de Guia-Salvador.

[2] Id. at 99-100.

[3] Id. at 73-78. The case was presided over by Judge Oscar B. Pimentel.

[4] Id. at 32-33.

[5] Id. at 34-40.

[6] Id. at 41-47.

[7] Id. at 48-51.

[8] Id. at 52.

[9] Supra note 1, at 80-81.

[10] Id. at 81.

[11] Rollo, pp. 53-64.

[12] Id. at 65-68.

[13] Supra note 1, at 81-82.

[14] Supra note 3, at 78.

[15] Supra note 1, at 83.

[16] Id. at 84.

[17] Id. at 86.

[18] Rollo, pp. 88-98.

[19] Supra note 2.

[20] Rollo, p. 187.

[21] G.R. No. 131209, August 13, 1999, 312 SCRA 365, 371.

[22] Celino v. Heirs of Alejo and Teresa Santiago, G.R. No. 161817, July 30, 2004, 435 SCRA 690, 693-694.

[23] See Toribio v. Bidin, No. L-57821, January 17, 1985, 134 SCRA 162, 170.

[24] G.R. No. 87434, August 5, 1992, 212 SCRA 194, 204.

[25] Supra note 1, at 84.

[26] Id. at 85-86.

[27] Rollo, p. 49.

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