CITIBANK, N.A. MASTERCARD, PETITIONER, VS. EFREN S. TEODORO, RESPONDENT.

G.R. No. 150905. September 23, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Before secondary evidence may be admitted to prove the contents of original documents, the offeror must prove the due execution and the subsequent loss or unavailability of the original.

The Case

The Petition for Review[1] before us assails the July 31, 2001 Decision[2] and the November 22, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 62891. The dispositive portion of the challenged Decision reads as follows:

> "WHEREFORE, premises considered, the Petition is GRANTED; and the Decisions of the trial courts are hereby REVERSED and SET ASIDE. No costs."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

Petitioner operates a credit card system through which it extends credit accommodations to its cardholders for the purchase of goods and services from its member establishments. The purchases are later on paid for by cardholders upon receipt of the billings or statements of account from the company. Respondent Efren S. Teodoro was one such cardholder. On December 14, 1990, he applied for membership with petitioner. After his application was approved, he was issued Citibank, N.A. Mastercard No. 5423-3920-4457-7009.

Under the terms and conditions governing the use of the Citibank credit card, the cardholder undertakes to pay all the purchases made using the card within the period indicated on the statement of account or within thirty (30) days from the date or dates of its use. Charges that remain unpaid within the period fixed in the monthly statement of account shall earn interest at the rate of 3.5 percent per month plus a penalty fee equivalent to 5 percent of the amount due for every month or even a fraction of a month's delay.

Respondent made various purchases through his credit card. Accordingly, he was billed by petitioner for those purchases, for which he tendered various payments.

Petitioner claims that as of January 20, 1995, the obligations of respondent stood at P191,693.25, inclusive of interest and service charges. Several times it demanded payment from him, but he refused to pay, claiming that the amount demanded did not correspond to his actual obligations. His refusal prompted petitioner to file a Complaint for collection on January 25, 1996 before the Regional Trial Court (RTC) of Makati City. The case was docketed as Civil Case No. 96-092 and raffled to Branch 133.

The RTC, in an Order dated April 23, 1996, dismissed the Complaint for lack of jurisdiction over the amount involved. The case was then transferred to the Metropolitan Trial Court (MTC) of Makati City, where it was docketed as Civil Case No. 51586 and raffled to Branch 66.

During the trial, petitioner presented several sales invoices or charge slips, which added up to only P24,388.36. Although mere photocopies of the originals, the invoices were marked in evidence as Exhibits "F" to "F-4." Because all these copies appeared to bear the signatures of respondent, the trial court deemed them sufficient proof of his purchases with the use of the credit card. Accordingly, the MTC in its July 25, 2000 Decision[5] ordered him to pay petitioner the amount of P24,388.36 plus interest and penalty fee. The material portion of the Decision reads:

> "[Petitioner] is claiming that [respondent] made use of its credit card. And as of January 20, 1995, [respondent's] obligation to [petitioner] ballooned to the sum of P191,693.25.
>
> "This is clear according to [petitioner] as shown by the Statement of Accounts.
>
> "To the mind of this Court, the Statement of Account alone will not prove that [respondent] has an outstanding obligation to [petitioner] in the amount of P191,693.95. This must be substantiated by the Sales Invoices which unearthed the purchases made by [respondent] when he availed himself of the credit card of [petitioner].
>
> "While it is true that [petitioner] has offered the Sales Invoices (Exhibits `F', `F-1', `F-4') to show the purchases made by [respondent], it is equally true also that adding all the amount in said invoices, the sum of P191,693.95 which according to [petitioner] is the outstanding obligation of [respondent], is hardly met. [Petitioner] even admitted that it could not produce all the invoices. Without the other Sales Invoices, there is a cloud of doubt hovering over the claim of [petitioner] to [respondent].
>
> "In fact, summing up all the amount[s] indicated in the aforesaid Sales Invoices the fact that the [respondent] has incurred to [petitioner] an obligation in the amount of P24,388.36 as a result of the former's availment of the credit card of the latter.
>
> "It is elementary procedure that [petitioner] must prove [its] case with preponderance of evidence. Without all the other Sales Invoices to uncover the purchases made by [respondent] when he used the credit card of [petitioner], it is undeniable x x x that [petitioner] is caught in the web of doubt with respect to the accuracy of its claim to the [respondent].
>
> "WHEREFORE, premises considered, this Court hereby renders judgment as follows:
>
> "1. Ordering [respondent] to pay [petitioner] P24,388.36 with an interest of 3.5% and a penalty fee equivalent to another 5% of the amount due for every month due or a fraction of a month's delay starting February 21, 1995 until the entire obligation is fully paid;
>
> "2. Ordering [respondent] to pay [petitioner] 25% of any and all amounts due and payable as agreed attorney's fees plus cost of suit."[6]

Thereafter, respondent appealed the MTC judgment to the RTC of Makati City, where the appeal was docketed as Civil Case No. 00-1051 and raffled to Branch 146. In its October 30, 2000 Decision,[7] the RTC affirmed the MTC Decision in toto.

Ruling of the Court of Appeals

The focal issue of the case according to the CA was whether the photocopies of the sales invoices or charge slips, marked as Exhibits "F" to "F-4," were competent proofs of the obligations of respondent. These were the only evidence presented by petitioner that could prove the actual amount of obligation he had incurred in favor of the former. In reversing the trial courts, the CA ruled that this evidence was insufficient to prove any liability on

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respondent's part.

According to Sections 3 and 5 of Rule 130 of the Rules of Court, whenever the subject of inquiry is the content of a document, its original must be produced, as it is the best evidence to prove such content. Secondary evidence, like the subject photocopies, is inadmissible. It will be admissible only if the offeror proves (a) any of the exceptions enumerated in Section 3 and (b) the conditions for its admissibility set forth in Section 5 of Rule 130. For secondary evidence to be admissible, there must be satisfactory proof of (1) the due execution of the original; (2) the original's loss, destruction or unavailability that is not due to the offeror's bad faith; and (3) reasonable diligence and good faith in the search for or attempt to produce the original.

Although petitioner was able to prove the existence of the original sales invoices, it failed to prove their due execution or to account for their loss or unavailability.

Hence, this Petition.[8]

Issues

Petitioner raises the following issues for our consideration:

> "I.
>
> Whether or not the Court of Appeals erred in reversing and setting aside the decision of the trial courts for insufficiency of evidence to support its findings.
>
> "II.
>
> Whether or not the Court of Appeals erred in holding that petitioner failed to prove the due execution and the cause of the unavailability and non-production of the charge slips marked in evidence as Exhibits `F' to `F-4.'"[9]

In brief, the main issue boils down to whether the photocopies of the sales invoices or charge slips marked during trial as Exhibits "F" to "F-4" are admissible in evidence.

The Court's Ruling

The Petition has no merit.

Main Issue:
Admissibility of Photocopies

Petitioner contends that the testimony[10] of its principal witness -- Mark Hernando, assistant manager of Citibank, N.A. Mastercard -- proves the following:

> a)
>
> the existence or due execution of the original sales invoices which sufficiently proved respondent's liability of P24,388.36;
>
> b)
>
> the loss or unavailability of the original sales invoices; and

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c)

petitioner's reasonable diligence and good faith in the search for or attempt to produce the originals.

It further argues that Hernando competently identified the signatures of respondent on the sales invoices, having recognized them as identical to the signature on the latter's credit card application form.

On the other hand, respondent maintains that petitioner failed to prove the due execution of the sales invoices. According to him, Hernando was not privy to such execution and could not have properly or competently declared that the signatures on the invoices and on the application form belonged to the former. The latter was not the person before whom the application form was signed, executed or acknowledged; he was not even present then. As to the sales invoices and respondent's alleged signatures thereon, he saw them only after the Complaint had been filed in court or long after those invoices had been executed. He was therefore not competent to identify the signatures.

Because Hernandez had not actually witnessed the execution of the sales invoices and the application form, respondent concludes that petitioner failed to observe Section 5 of Rule 130 of the Rules of Court, which provides that the contents of the original may be proven by the testimony of witnesses.

Finally, respondent contends that the alleged loss or unavailability of the original sales invoices was not sufficiently established. Allegedly, Hernandez had requested the originals from Equitable Credit Card Network, Inc., but failed to show in court that he had followed up his request as advised by another witness, Zen Hipolito. Therefore, the requirement of reasonable diligence and good faith in the search for or attempt to produce the originals was not satisfied, because he had shown no proof of having followed up the request.

The burden of proof rests upon petitioner, as plaintiff, to establish its case based on a preponderance of evidence. It is well-settled that in civil cases, the party that alleges a fact has the burden of proving it.[11] Petitioner failed to prove that respondent had an obligation in the principal amount of P24,388.36, because the photocopies of the original sales invoices it had presented in court were inadmissible in evidence. Moreover, had they been admissible, they would still have had little probative value.[12]

The original copies of the sales invoices are the best evidence to prove the alleged obligation. Photocopies thereof are mere secondary evidence. As such, they are inadmissible because petitioner, as the offeror, failed to prove any of the exceptions provided under Section 3[13] of Rule 130 of the Rules of Court, as well s the conditions of their admissibility. Because of the inadmissibility of the photocopies in the absence of the originals, respondent's obligation was not established.

Section 5 of Rule 130 of the Rules of Court states:

> "SEC. 5. When original document is unavailable. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated."

Applying the above Rule to the present case, before a party is allowed to adduce secondary evidence to prove the contents of the original sales invoices, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed.[14] The correct order of proof is as follows: existence, execution, loss, and contents. At the sound discretion of the court, this order may be changed if necessary.[15]

In the present case, the existence of the original sales invoices was established by the photocopies and the testimony of Hernandez. Petitioner, however, failed to prove that the originals had been lost or could not be produced in court after reasonable diligence and good faith in searching for them.

Indeed, the loss of the originals and reasonable diligence in the search for them were conditions that were not met, because the sales invoices might have been found by Equitable. Hernandez, testifying that he had requested the originals from Equitable, failed to show that he had subsequently followed up the request.[16]

Finally, when more than one original copy exists, it must appear that all of them have been lost, destroyed, or cannot be produced in court before secondary evidence can be given of any one. A photocopy may not be used without accounting for the other originals.[17]

In Santos v. Santos[18] the Court upheld the pronouncement of the CA that before the appellees therein could be allowed to adduce secondary evidence to prove the contents of the original, they had to prove -- with the requisite quantum of evidence -- the loss, the destruction or the unavailability of all original copies of the document.

In the present case, triplicates were produced, although the cardholder signed the sales invoice only once.[19] During the trial, Hernandez explained that an original copy had gone to respondent, another to the merchant, and still another to petitioner.[20]

Each of these three copies is regarded as an original in accordance with Section 4 (b) of Rule 130 of the Rules of Court.[21] Petitioner failed to show that all three original copies were unavailable, and that due diligence had been exercised in the search for them.

WHEREFORE, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

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[1] Rollo, pp. 3-18.

[2] Id., pp. 27-37. Penned by Justice Andres B. Reyes Jr., with the concurrence of Justices B. A. Adefuin-de la Cruz (Division chair) and Josefina Guevara-Salonga (member).

[3] Id., p. 48.

[4] CA Decision, p. 11; Rollo, p. 37.

[5] Id., pp. 19-23; records, pp. 307-311.

[6] Id., pp. 21-23 & 309-311. Citations omitted. Penned by Judge Felicidad Y. Navarro-Quiambao.

[7] Id., pp. 24-25 & 332-333. Written by Judge Salvador S. Tensuan.

[8] This case was deemed submitted for decision on September 16, 2002, upon this Court's receipt of respondent's Memorandum signed by Atty. Nazario B. Regino. Filed earlier on August 19, 2002, was petitioner's Manifestation that it was adopting its Petition as its memorandum, signed by Attys. Ruben V. Lopez and Marcelo G. Rempillo Jr.

[9] Petition for Review on Certiorari, p. 5; Rollo, p. 7. Original in upper case.

[10] TSN, February 10, 1998, p. 7; records, p. 101.

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[11] Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, 333 Phil. 597, December 18, 1996; Trans-Pacific Industrial Supplies, Inc. v. Court of Appeals, 235 SCRA 494, August 19, 1994.

[12] Security Bank &Trust Company v. Triumph Lumber and Construction Corporation, 361 Phil. 463, January 21, 1999.

[13] Section 3 of Rule 130 provides:

> "SEC. 3. Original document must be produced; exceptions. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office."

[14] Santos v. Court of Appeals, 368 SCRA 91, October 23, 2001; citing Francisco, Evidence: Rules of Court in the Philippines (3[rd] ed., 1996), Rules 128-134.

[15] De Vera v. Aguilar, 218 SCRA 602, February 9, 1993.

[16] TSN, August 11, 1998, pp. 10-12; id., pp. 243-245.

[17] Herrera, Remedial Law, Vol. 5, (1999 ed.), p. 178; citing 5 Moran 88 (1980 ed.).

[18] 342 SCRA 753, October 12, 2000.

[19] TSN, August 11, 1998, p. 5; records, p. 238.

[20] Id., pp. 5-7 & 238-240.

[21] "SEC. 4. Original document. –

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> "(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals."

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