

RIMBUNAN HIJAU GROUP OF COMPANIES AND NIUGINI LUMBER MERCHANTS PTY., LTD., PETITIONERS, VS. ORIENTAL WOOD PROCESSING CORPORATION, RESPONDENT.

G.R. No. 152228. September 23, 2005

Ponente: TINGA, J.

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TINGA, J.

Up for determination once again is the perennial question of whether an unlicensed foreign corporation has access to the domestic courts.

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] and the Resolution[2] of the Court of Appeals (CA) dated 30 October 2001 and 6 February 2002, respectively, in CA-G.R. SP No. 59811.

This case stemmed from a complaint for sum of money filed by Rimbunan Hijau Group of Companies ("Rimbunan") and Niugini Lumber Merchants Pty., Ltd. ("Niugini") against Oriental Wood Processing Corporation (respondent) before Branch 22 of the Regional Trial Court (RTC) of Malolos, Bulacan. Rimbunan and Niugini (petitioners) are foreign corporations duly organized and existing under the laws of Papua New Guinea ("PNG") while respondent is a private domestic corporation organized and existing under Philippine laws.[3]

On 27 December 1999, petitioners filed an amended complaint with application for preliminary attachment[4] against respondent, seeking to recover the amount of Three Hundred Forty Three Thousand Seven Hundred Forty One Dollars and Fifty Two Cents (US\$343,741.52) or its equivalent in Philippine currency. The amount represented the alleged remaining balance on the total purchase price of Five Hundred Forty Three Thousand Six Hundred Ninety Nine Dollars and Fifty Two Cents (US\$543,699.52) for the mixed species of PNG logs which petitioners sold and exported to respondent sometime in July 1998.[5]

The pertinent allegations in petitioners' amended complaint follow.

- Plaintiffs RIMBUNAN HIJAU GROUP OF COMPANIES (hereinafter referred to as "Rimbunan") and NIUGINI LUMBER MERCHANTS, PTY. LTD., (hereinafter referred to as "Niugini") are nonresident foreign corporations, not doing business in the Philippines, duly organized and existing under and by virtue of the laws of Papua New Guinea ("PNG") with principal office at Port Moresby, Papua New Guinea. Niugini is a subsidiary of plaintiff Rimbunan and has the same set of directors and officers as the latter. In Papua New Guinea, they are engaged in the business of extraction and exportation of PNG round logs.

- Plaintiffs have no representative/liaison offices, or branch offices in the Philippines. They are not licensed to do business in the Philippines and as such, they do not engage in any business in this jurisdiction except for some isolated transactions.

. . . .

- Plaintiffs sold and delivered to defendant a total of 8,364,608 cubic meters of mixed group of species of PNG round logs under the following circumstances:

4.a. Sometime in June 1998, plaintiff Rimbunan had explanatory talks with the defendant for the shipment of PNG logs. At the conclusion of the said discussion, defendant agreed to purchase PNG logs from plaintiff.

4.b. In accordance with the company practice, plaintiff Rimbunan nominated plaintiff Niugini to enter into sale transaction with the defendant. Defendant, on the other hand, promised to open a letter of credit in favor of plaintiff Niugini to cover the transaction.

- Pursuant to the abovementioned agreement, defendant, in the early part of July 1998, purchased from plaintiff Niugini 8,364,608 cubic meters of a mixed group of species of PNG round logs, for the total purchase price of US\$543,699.52 as evidenced by Commercial Invoice No. LK0198, a copy of which is hereto attached as Annex "A".

- For the shipment of the said logs, plaintiff engaged the services of the vessel, "MV Bintang Harapan", owned by Namjeon International Co., Ltd. (hereinafter, "Namjeon International").

- To pay for the purchase price of shipment, defendant undertook to obtain a letter of credit from its bank in favor of plaintiff Niugini to cover the transaction. However, after the vessel "MV Bintang Harapan" left the port of Cape Monggil, Papua New Guinea, the defendant in a fax message dated 14 July 1998 informed the plaintiffs that it would resort to telegraphic transfer directly to plaintiffs' bank account to pay the said purchase price citing as reason tight government regulations which allegedly made the processing of letter of credit difficult. A copy of the defendant's fax message dated 14 July 1998 is hereto attached and made an integral part hereof as Annex "B".

- While the vessel "MV Bintang Harapan" was navigating the seas, defendant made three (3) telegraphic [transfers] to the plaintiffs in the total amount of US\$150,000.00.

- On 18 July 1998, the said vessel arrived in the port of Manila. Ten (10) days after, the shipment was completely unloaded from the vessel. As of the said date, plaintiffs had only received the amount of US\$150,000.00 through direct telegraphic transfer remittance leaving a balance of US\$393,699.52 which includes the ocean freight charges. Despite this, the plaintiffs, relying on the promise made by the defendant that it would immediately remit the remaining balance by telegraphic transfer, transmitted to the defendant the original copies of the Bill of Lading, Commercial Invoice, and Packing List to enable it to obtain the release of the goods from customs authorities, which, in fact, it was able to do.

- Despite the delivery of the shipment to the defendant, the latter failed to fulfill its undertaking to remit immediately by telegraphic transfer the remaining balance on the purchase price of the said shipment. In a telephone conversation, the defendant promised to settle the balance within one (1) month from 10 August 1998.

....

- After repeated demands made by plaintiff Rimbunan, defendant made another promise on 11 December 1998 to the plaintiffs that it will settle the remaining balance before Christmas. Again, the defendant failed to make good on its promise. In view of the continuous refusal of the defendant to settle its obligations, plaintiff Niugini, through its Legal Adviser, Mr. J.K. Balasubramaniam, sent a demand letter on 29 May 1999 to the defendant asking for the payment of the remaining balance on the subject shipment within fourteen (14) days from the date of the said letter. A copy of the said demand letter dated 29 May 1999 is hereto attached and made integral part hereof as Annex "J".

- In its 25 January 1999 letter, defendant expressly acknowledged that it owes the plaintiffs the amount of US\$393,699.52, representing the unpaid outstanding balance on the shipment. The following statements were

made by the defendant in the said letter:

"x x x

As for the outstanding balance of US\$393,699.52, we are very much concerned as you are in trying to settle this. I have explained to you over the phone about our capital being tied up mostly in inventory. Our revolving capital has been diminished with creditors and interest payments coming in. As of this time, we can not give you a firm schedule of payment because of this predicament.

x x x"

....

- Thereafter, defendant made two (2) separate payments via telegraphic transfer in the amounts of US\$29,979.00 and US\$19,979.00, thereby reducing the outstanding balance to US\$343,741.52. In a 7 July 1999 letter, plaintiff Niugini, through Mr. Balasubramaniam, demanded for the payment of the said outstanding balance within seven (7) days from the date of the said letter. Plaintiff Niugini again reiterated the same demand in a 28 July 1999 letter. A copy of each of the 7 July 1999 and 28 July 1999 is hereto attached and made integral part hereof as Annex "L" and "M", respectively.

- Defendant did not make any further payments despite its receipt of the abovementioned demand letters. Thus, plaintiff Niugini, through its Philippine counsel, Tan & Venturanza Law Offices, sent a final demand letter dated 18 August 1999 asking for the payment of the remaining balance on the shipment in the amount of US\$343,741.52 within fourteen (14) days from receipt of the said letter, a copy of which is hereto attached and made integral part hereof as Annex "N".

- Despite the lapse of the fourteen-day period given in the abovementioned demand letter and up to the present, defendant has not yet settled its outstanding obligation with the plaintiffs.[6] (Emphasis supplied.)

On 21 March 2000, respondent filed a Motion to Dismiss[7] on the grounds that petitioners have no legal capacity to sue in this jurisdiction and that Niugini has no legal personality to sue.[8] Respondent claimed in its motion that Rimbunan had been doing business in the Philippines without a license from 1996 to 1998. Within that two-year period, Rimbunan was alleged to have made no less than fourteen (14) transactions with respondent involving about 57,351.52 cubic meters of round logs with an estimated total value of Four Million dollars (US\$4,000,000.00). Said transactions, according to respondent, clearly constituted a continuity of commercial dealings in the progressive prosecution of the purpose and object of Rimbunan's organization.[9]

On 26 April 2000, petitioners filed an opposition with a Motion to Expunge Oriental's Motion to Dismiss.[10] In their opposition, petitioners posited that respondent was estopped from questioning their capacity to sue.[11] In addition, on 3 May 2000, petitioners filed a Motion to Declare Defendant (Oriental) in Default.[12]

In a Resolution[13] dated 26 June 2000, the trial court denied the three (3) aforesaid motions.[14]

In denying respondent's Motion to Dismiss, the trial court concluded that petitioners were not doing business in the Philippines but were merely suing on an isolated transaction. As such, petitioners were legally capacitated to institute and maintain an action against respondent notwithstanding their lack of license to do business in this jurisdiction.[15] The lower court also invoked estoppel as a ground for denying the motion to dismiss. It held that respondent is estopped from challenging the personality of petitioners after having acknowledged the same by entering into a contract with them.[16]

Undaunted, on 21 July 2000, respondent elevated the trial court's resolution to the CA via the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[17] In the certiorari petition, respondent

contended that the lower court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it held that petitioners were not doing business in the Philippines.

According to respondent, the trial court failed to consider Rimbunan's admission of having engaged in "isolated transactions" in the Philippines. The use of the term "isolated transactions" in its plural form allegedly supported respondent's submission in its Motion to Dismiss that Rimbunan made numerous shipments of logs to the

Philippines from 1996-1998. The fact that Rimbunan raked an estimated amount of US\$4,000,000 from those transactions allegedly constituted proof that it had been doing business in the Philippines.[18] Respondent thus questioned the lower court's conclusion that petitioners' lack of license was immaterial as it was suing on an isolated transaction.[19]

Respondent likewise took exception to the lower court's declaration that by entering into a contract with petitioners, it was estopped from challenging petitioners' personality and capacity to sue in this jurisdiction. Respondent postulated that sanctioning this argument would make legal capacity to sue dependent, not upon the law, but upon a party's conduct.[20] The lower court's finding that Niugini was a real party-in-interest and therefore had personality to sue was also challenged by respondent.[21]

The petition was initially dismissed outright for failure to attach the required affidavit of service,[22] but subsequently reinstated in a Resolution[23] dated 27 June 2001.

In the meantime, respondent filed before the trial court an Answer with Compulsory Counterclaim (Ad Cautelam) on 24 July 2000.[24] In said pleading, respondent admitted the transaction subject matter of the complaint but claimed that the discrepancy in log measurements cancelled out its liability to Rimbunan. At the same time, respondent alluded to the fourteen (14) transactions it allegedly had with Rimbunan to show that the latter was doing business in the Philippines without a license.[25] Petitioners subsequently filed a reply dated 1 September 2000 specifically denying the allegations in respondent's answer.[26] Thereafter, the case was set for pre-trial.[27]

At the pre-trial hearing on 27 February 2001,[28] respondent once again admitted the transaction subject matter of the complaint but claimed that its failure to pay the obligation stemmed from currency restrictions imposed by the Central Bank, the lower prices of logs, and the fact that the quantity, quality and measurement of the logs delivered were not as per contract.[29]

Then, on 30 October 2001, the CA granted respondent's petition for certiorari and ordered the dismissal of the complaint. The appellate court disregarded the trial court's conclusion that petitioners merely engaged in isolated transactions and instead held that based on the facts, petitioners' dealings constituted doing business in the Philippines.[30] Consequently, the CA held that the petitioners were proscribed from suing respondent in Philippine courts.

The CA characterized petitioners as "never [having denied] but even admitted [that their acts and transactions] constitute not merely incidental or casual performance of business, but are of such character as distinctly to indicate a purpose on [their] part to do business in the Philippines." [31] No reference though was made by the appellate court as to how and when petitioners exactly admitted these "relevant acts and transactions."

In challenging the decision of the CA, petitioners asseverate before this Court that the appellate court radically departed from established jurisprudence, first, when it decided a question of fact in an original petition for certiorari and second, when it ruled that petitioners have no capacity to sue.[32]

According to petitioners, no proof has as yet been adduced relative to the alleged existence of the fourteen (14) transactions between Rimbunan and respondent. As this was the basis used by the CA in concluding that

petitioners were doing business in the Philippines, it was vital for the parties to present evidence on the matter. Moreover, since the issue was factual, the same should have been threshed out before the trial court.[33] Petitioners therefore claim that it was patent error for the CA to have ruled on a question of law on the basis of alleged facts that had not even been established yet.[34]

Even assuming that the alleged fourteen (14) transactions between Rimbunan and respondent did occur, petitioners argue that they still possess the legal capacity to sue respondent on the basis of the equitable doctrine of estoppel. Invoking *Communication Materials Design, Inc. v. Court of Appeals*,[35] petitioners posit that the principle of estoppel prevents a person who had already benefited from a contract with a foreign corporation from later taking advantage of the latter's non-compliance with the statutes.[36]

The petition has merit.

From the outset, it is worthy of note that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[37]

To justify the grant of the extraordinary remedy of certiorari, therefore, the denial of the motion to dismiss must have been tainted with grave abuse of discretion.[38] By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[39]

In the case at bar, no explanation was given by the CA to justify its grant of the extraordinary remedy of certiorari. Instead, the essence of the assailed decision indicates that the CA had substituted its evaluation of the motion to dismiss and the opposition thereto for that of the trial court's, without regard to the evidence which was still to be presented on the issue of whether or not petitioners are doing business in the Philippines or merely suing on an isolated transaction. It must be remembered that the standard of grave abuse of discretion is error of jurisdiction as distinguished from error of judgment.

Our discomfort though with the CA's decision lies not merely in the granting of the petition without an indicium of grave abuse of discretion on the lower court's part, but more on the appellate court's anchoring its conclusion on facts which were not sufficiently backed by evidence.

Ineluctably, the question central to petitioners' capacity to sue is a factual question. An unlicensed foreign corporation is nonetheless permitted to bring suit in the Philippines if it is suing on an isolated transaction. Thus, the ascertainment of whether a foreign corporation is merely suing on an isolated transaction or is actually doing business in the Philippines requires the elicitation of at least a preponderant set of facts. It simply cannot be answered through conjectures or acceptance of unsubstantiated allegations.

Even if the challenge to a foreign corporation-plaintiff's capacity to sue is raised in the preliminary stage that a motion to dismiss is, the demand for a clear factual finding to justify the dismissal cannot be dispensed with. Section 2, Rule 16 of the 1997 Rules of Civil Procedure allows not only a hearing on the motion to dismiss, but also for the parties to submit their evidence on the questions of fact involved.[40] Evidently, the factual question of whether an unlicensed foreign corporation is indeed suing merely on an isolated transaction may be litigated extensively at the hearing or hearings on the motion to dismiss. The parties are allowed to submit their respective

evidence, and even rebut the opposing parties' evidence.

The hearing should provide the parties the forum for full presentation of their sides. From the trial court's perspective, the extent of such hearing would depend on its satisfaction that the unlicensed foreign corporation's capacity to sue has been established or disestablished. What is essential is that if the trial court grants the motion to dismiss on this ground, the fact that the corporation is actually doing business in the Philippines or is not suing on an isolated transaction must be established by a preponderance of evidence, in accordance with Section 1,[41] Rule 133. The standard of preponderance of evidence would apply in that instance since the order granting the motion to dismiss is a final order dispositive of the case and also since the burden of proof to establish the ground for dismissal is on the defendant-movant.

If, as in this case, the appellate court were to reverse the trial court and order the dismissal of the complaint, it must be clear that the incapacity to sue of the unlicensed foreign corporation has been established by a preponderance of evidence; otherwise the lower court's denial of the motion to dismiss should be affirmed.

Still, undisputed allegations or admissions by the parties carry evidentiary weight which could factor in the determination of preponderance of evidence. The CA in this case was under the apparent impression that petitioners had admitted that they were regularly doing business in the Philippines. Thus, the primordial question is whether there was evidence before the trial court and the CA on which the reversal of the trial court's resolution would be warranted.

As borne out by the record, there appears to be none. In rendering its assailed decision, the CA made the following pronouncements:

The trial court ruled that [petitioners Rimbunan and Niugini] are not doing or transacting business in the Philippines and that they are merely involved in isolated transactions. [Respondent Oriental Wood Processing Corp.] thinks otherwise, insisting that . . . Rimbunan, from 1996 to 1998 had no less than fourteen (14) transactions with [respondent] involving about 57, 351.52 cubic meters of round logs with an estimated total value of US\$4.0 million. These, according to [respondent], clearly constitute a continuity of commercial dealings in the progressive prosecution of the principal and primary purpose and object of . . . Rimbunan.

What then constitutes "doing" or "transacting" business in the Philippines?

...

From the foregoing dissertations, we could readily infer that, indeed, [petitioners] are doing or transacting business in the Philippines without the appropriate license to do the same. The acts and transactions of [petitioners], which they, incidentally, never deny but even admitted, constitute not merely incidental or casual performance of business, but are of such character as distinctly to indicate a purpose on the part of (petitioners) to do business in the Philippines. There is no denying that the transactions they are engaged in constitute performance of acts for which [petitioners] were created or organized. Clearly therefore, [petitioners] cannot sue in our courts for lack of license.[42]

Plainly, the Court of Appeals, in concluding that petitioners were doing business in the Philippines relied merely on respondent's say-so. This is evident as the following unsubstantiated averments comprise respondent's total basis for ascribing lack of capacity to sue to petitioners: (1) bare allegations that Rimbunan had engaged in fourteen (14) transactions with respondent and delivered logs with an estimated total value of US\$4,000,000.00 to it from 1996 to 1998;[43] (2) Rimbunan's failure to seriously dispute such allegations in the pleadings it subsequently filed;[44] and (3) "information hereabouts that Rimbunan has had business transactions in the Philippines." [45]

We have stressed time and again that allegations must be proven by sufficient evidence because mere allegation is

definitely not evidence.[46] It cannot be used as basis for a court's decision. Absent evidence to prove respondent's allegations in the case at bar, this Court fails to see how the Court of Appeals could have concluded that petitioners were doing business in the Philippines.

If, as petitioners conjecture in their petition, the appellate court based its conclusion on the alleged admission as a result of petitioners' failure to specifically deny the allegations in the motion to dismiss, this Court cannot subscribe to that ratiocination. A party's failure to specifically deny the allegations in a motion to dismiss should not be deemed a substitute for hard evidence.

While the 1997 Rules of Civil Procedure provides that material averments in a complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied,[47] no similar provision was incorporated relative to motions to dismiss. Rightly so, since a motion to dismiss is not an initiatory pleading as opposed to a complaint. Thus, the general rule that whoever alleges a fact must prove that fact by convincing evidence[48] is applicable in this case.

Based on the above, the reinstatement of this case in the lower court for further proceedings, including trial on the merits, is necessary. Courts could not afford to dismiss a litigants' complaint on the basis of a half-baked conclusion that a party is incapacitated to sue in this jurisdiction with no evidence to show for it. The issue has to be determined in accordance with the facts presented, not on the basis of unsubstantiated allegations.

Moreover, even without the foregoing ground, the reversal of the CA's Decision and the reinstatement of this case at the trial court level is still warranted. The lower court in its resolution correctly held that respondent is estopped from questioning petitioners' capacity to sue in this jurisdiction. The trial court found that respondent had contracted with petitioners and had in fact made a partial payment of US\$150,000.00 on its obligation. After contracting with a foreign corporation, a domestic firm can no longer deny the former's capacity to sue.[49]

Estoppel is deeply rooted in the axiom of *commodum ex injuria sua non habere debet*—no person ought to derive any advantage from his own wrong.[50]

In this case, the existence of the transaction giving rise to the complaint was categorically admitted by respondent. In its Answer with Compulsory Counterclaim (*Ad Cautelam*),[51] respondent declared that:

1.3 [Respondent] transacted business with (RIMBUNAN HIJAU GROUP OF COMPANIES [RIMBUNAN] and not with plaintiff (NIUGINI LUMBER MERCHANTS PTY LTD. [NIUGINI] as far back as 1996 thru 1998. RIMBUNAN had made no less than fourteen (14) transactions with [respondent] involving about 57,351.52 cubic meters of round logs with an estimated total value of \$4,000,000.00, more or less. The transaction subject matter of the present case refers to the last sale and export by RIMBUNAN to [respondent] of mixed species of round logs worth \$543,699.52. . . .[52] (Emphasis supplied.)

Respondent's unequivocal admission of the transaction which gave rise to the complaint establishes the applicability of estoppel against it. Rule 129, Section 4[53] of the Rules on Evidence provides that a written admission made by a party in the course of the proceedings in the same case does not require proof. We held in the case of *Elayda v. Court of Appeals*,[54] that an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to him.[55] Thus, our consistent pronouncement, as held in cases such as *Merril Lynch Futures v. Court of Appeals*,[56] is apropos:

The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;" "one who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its existence and capacity." The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the

statutes, chiefly in cases where such person has received the benefits of the contract . . ."[57]

All things considered, respondent can no longer invoke petitioner's lack of capacity to sue in this jurisdiction. Considerations of fair play dictate that after having contracted and benefited from its business transaction with Rimbunan, respondent should be barred from questioning the latter's lack of license to transact business in the Philippines.

In the case of *Antam Consolidated, Inc. v. CA*,^[58] this Court noted that it is a common ploy of defaulting local companies which are sued by unlicensed foreign corporations not engaged in business in the Philippines to invoke the latter's lack of capacity to sue. This practice of domestic corporations is particularly reprehensible considering that in requiring a license, the law never intended to prevent foreign corporations from performing single or isolated acts in this country, or to favor domestic corporations who renege on their obligations to foreign firms unwary enough to engage in solitary transactions with them. Rather, the law was intended to bar foreign corporations from acquiring a domicile for the purpose of business without first taking the steps necessary to render them amenable to suits in the local courts.^[59] It was to prevent the foreign companies from enjoying the good while disregarding the bad.

As a matter of principle, this Court will not step in to shield defaulting local companies from the repercussions of their business dealings. While the doctrine of lack of capacity to sue based on failure to first acquire a local license may be resorted to in meritorious cases, it is not a magic incantation. It cannot be called upon when no evidence exists to support its invocation or the facts do not warrant its application. In this case, that the respondent is estopped from challenging the petitioners' capacity to sue has been conclusively established, and the forthcoming trial before the lower court should weigh instead on the other defenses raised by the respondent.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision and the Resolution of the Court of Appeals dated 30 October 2001 and 6 February 2002, respectively, are REVERSED AND SET ASIDE. The Resolution dated 26 June 2000 of the lower court is

REINSTATED. The case is ordered REMANDED to the lower court for further proceedings. Costs against the respondent.

SO ORDERED.

Puno (Chairman), Austria-Martinez, and Chico-Nazario, JJ., concur.
Callejo, Sr., J., No Part

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, concurred in by Associate Justices Romeo J. Callejo, Sr. (now a member of the Supreme Court) and Josefina Guevarra-Salonga.

[2] Rollo, p. 87.

[3] CA Rollo, p. 211.

[4] Rollo, p. 96-108.

[5] Id. at 106.

[6] Id. at 96-102.

[7] CA Rollo, pp. 68-76.

[8] Ibid.

[9] Id. at 72.

[10] Id. at 77-86.

[11] Id. at 80-84.

[12] Rollo, p. 156.

[13] Id. at 156-161.

[14] "WHEREFORE, PREMISES CONSIDERED, plaintiff's motions to declare the defendant in default, and to expunge defendant's motion to dismiss are both DENIED for lack of merit. Likewise, the motion to dismiss filed by the defendant is DENIED for lack of merit.

SO ORDERED." Id. at 161.

[15] Rollo, pp. 159-160.

[16] Ibid.

[17] CA Rollo, pp. 1-2; Rollo, p. 363.

[18] CA Rollo, pp. 11-12.

[19] Id. at 8-9.

[20] Id. at 15-16.

[21] Id. at 9, 16-20.

[22] Id. at 96.

[23] Id. at 149-151.

[24] Rollo, pp. 246-253, 364.

[25] Id. at 247.

[26] CA Rollo, p. 551.

[27] After the filing of petitioner's reply, the trial court, through an Order dated 12 September 2000, had initially ordered the suspension of the proceeding pending resolution of the petition for certiorari filed before the CA. However, upon the CA's initial dismissal of the petition (subsequently reconsidered), supra note 22, the trial court consequently set the case for pre-trial.

[28] Id. at 554-555.

[29] Ibid.

[30] Id. at 215-220.

[31] Rollo, p. 11.

[32] Id. at 407.

[33] Id. at 409-410.

[34] Id. at 408.

[35] G.R. No. 102223, 22 August 1996, 260 SCRA 673, 692.

[36] Rollo, p. 427.

[37] Lu Ym v. Nabua, et. al., G.R. No. 161309, 23 February 2005.

[38] Ibid.

[39] Macawiwili Gold Mining and Dev't. Co. Inc., et. al. v. CA, et. al., G.R. No. 115104, 12 October 1998, 297 SCRA 602, 613 citing Planters Products, Inc. v. CA, G.R. No. 76591, 6 February 1991, 193 SCRA 563.

[40] See Section 2, Rule 16, 1997 RULES OF CIVIL PROCEDURE.

[41] Section 1. Preponderance of evidence, how determined.- In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[42] CA Rollo, pp. 215, 220.

[43] Id. at 72.

[44] Opposition to Motion to Expunge and Reply to Opposition to Motion to Dismiss, CA Rollo, p. 91.

[45] Id. at 92.

[46] Coronel v. Court of Appeals, G.R. No. 103577, 7 October 1996, 263 SCRA 15, 35.

[47] Rule 8, Section 11, 1997 REVISED RULES OF CIVIL PROCEDURE.

[48] Alonzo, et. al. v. San Juan, G.R. No. 137549, 11 February 2005.

[49] Subic Bay Metropolitan Authority v. Universal International Group of Taiwan, 394 Phil. 691 (2000).

[50] European Resources and Technologies, Inc. v. Ingenieurburo Birkhahn + Nolte, Ingeniurgesellschaft mbh, G.R. No. 159586, 26 July 2004, 435 SCRA 246.

[51] Rollo, pp. 246-253.

[52] Id. at 247.

[53] SECTION 4. Judicial admissions. – An admission, verbal or written, made by a party in the course of the proceedings 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.

[54] G.R. No. 49327, 18 July 1991, 199 SCRA 349, 353 citing *Joei's Radio Electric Supply v. Alto Electronics Corp.*, 104 Phil. 333 (1958).

[55] Ibid.; See also *Cunanan v. Amparo*, 80 Phil. 227; *Ramirez v. Orientalist Co.*, 38 Phil. 634; *McDaniel v. Apacible*, 44 Phil. 248; *De Jesus v. IAC*, 175 SCRA 559; *Santiago v. de los Santos*, 61 SCRA 146 and *Sta. Ana v.*

Maliwat, 21 SCRA 1018.

[56] G.R. No. 97816, 24 July 1992, 211 SCRA 824, 827.

[57] Id. at 837 (footnotes omitted).

[58] 227 Phil. 267 (1986).

[59] Ibid.

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