

F.A.T. KEE COMPUTER SYSTEMS, INC., PETITIONER, VS. ONLINE NETWORKS INTERNATIONAL, INC., RESPONDENT.

G.R. No. 171238. February 02, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For consideration of the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, which seeks to challenge the Decision[2] dated September 26, 2005 of the Court of Appeals in CA-G.R. CV No. 71910. The appellate court reversed and set aside the Decision[3] dated November 7, 2000 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 99-167, which dismissed the complaint filed by herein respondent Online Networks International, Inc. (ONLINE).

Petitioner F.A.T. Kee Computer Systems, Inc. (FAT KEE) is a domestic corporation engaged in the business of selling computer equipment and conducting maintenance services for the units it sold.

ONLINE is also a domestic corporation principally engaged in the business of selling computer units, parts and software.

On January 25, 1999, ONLINE filed a Complaint[4] for Sum of Money against FAT KEE docketed as Civil Case No. 99-167. ONLINE alleged that sometime in November 1997, it sold computer printers to FAT KEE for which the latter agreed to pay the purchase price of US\$136,149.43. The agreement was evidenced by Invoice Nos. 4680, 4838, 5090 and 5096[5] issued by ONLINE to FAT KEE. The invoice receipts contained a stipulation that "interest at 28% per annum is to be charged on all accounts overdue" and "an additional sum equal to 25% of the amount will be charged by vendor for attorney's fees plus cost of collection in case of suit." [6] It was further asserted in the Complaint that thereafter, FAT KEE, through its President Frederick Huang, Jr., offered to pay its US dollar obligations in Philippine pesos using the exchange rate of P40:US\$1. ONLINE claimed to have duly accepted the offer. The amount payable was then computed at P5,445,977.20. FAT KEE then made several payments amounting to P2,502,033.06 between the periods of March and May 1998. [7] As of May 12, 1998, the balance of FAT KEE purportedly amounted to P2,943,944.14. As the obligations of FAT KEE matured in December 1997, ONLINE applied the 28% interest on the unpaid amount. However, in view of the good business relationship of the parties, ONLINE allegedly applied the interest on the balance for a period of three months only. Thus, the total amount due, plus interest, was P3,012,636.17. [8] FAT KEE subsequently made additional payments in the amount of P2,256,541.12. A balance of P756,095.05, thus, remained according to ONLINE's computations. Despite repeated demands, FAT KEE failed to pay its obligations to ONLINE without any valid reason. ONLINE was allegedly constrained to send a final demand letter for the payment of the aforementioned balance. As FAT KEE still ignored the demand, ONLINE instituted the instant case, praying that FAT KEE be ordered to pay the principal amount of P756,095.05, plus 28% interest per annum computed from July 28, 1998 until full payment. ONLINE likewise sought the payment of 25% of the total amount due as attorney's fees, as well as litigation expenses and costs of suit.

FAT KEE duly answered[9] the complaint alleging, inter alia, that it did not reach an agreement with ONLINE for the payment of its obligations in US dollars. FAT KEE claimed that the invoice receipts of the computer printers, which quoted the purchase price in US dollars, were unilaterally prepared by ONLINE. While FAT KEE admitted that it offered to pay its obligations in Philippine pesos, it averred that the amount owing to ONLINE was only P5,067,925.34, as reflected in the Statement of Account (SOA) sent by ONLINE dated December 9, 1997.[10] FAT KEE stated that payments in Philippine pesos were tendered to ONLINE, in accordance with the SOA, and the latter accepted the same. FAT KEE denied that it agreed to the conversion rate of P40:US\$1 and claimed that it had already fully paid its total obligations to ONLINE. FAT KEE, thus, prayed for the dismissal of the complaint and, by way of counterclaim, sought the payment of P250,000.00 as attorney's fees.

The trial of the case ensued thereafter.

ONLINE first called Peter Jeoffrey Goco to the witness stand. Goco testified that he was the Legal Officer of ONLINE, whose duty was to monitor the outstanding or unpaid accounts of ONLINE's clients, as well as to send demand letters and recommend the filing of cases should the clients fail to pay.[11] FAT KEE was one of the clients of ONLINE, which had an outstanding balance of a little over P756,000.00.[12] Goco stated that the invoice receipts sent to FAT KEE were denominated in US dollars as the business of ONLINE was to sell imported computer products, in wholesale and retail. In view of the currency fluctuations during those times, ONLINE deemed that the better business policy was to bill their clients in US dollars.[13] FAT KEE allegedly had an outstanding balance of roughly around US\$136,000.00.[14] When ONLINE demanded payment, FAT KEE negotiated that it be allowed to pay in Philippine pesos. Goco attested that the parties subsequently agreed to a conversion rate of P40:US\$1. FAT KEE was able to remit partial payments to ONLINE, but as of May 1998, the amount of P756,095.05 remained unpaid.[15] As FAT KEE failed to settle its obligations, ONLINE included the payment of interests on the latter's claim.[16] FAT KEE then sent a letter to ONLINE, insisting that there was no agreement as to the exchange rate to be used in converting the unpaid obligations of FAT KEE and that the latter could not pay because of the extraordinary currency fluctuations.[17] The lawyers of ONLINE eventually sent a demand letter[18] to FAT KEE for the payment of the outstanding balance, but this too went unheeded. ONLINE, thus, filed the instant case.[19]

The next witness to be presented by ONLINE was James Payoyo, an Account Manager for the said company. Payoyo testified, among others, that sometime in November 1997, FAT KEE submitted their Purchase Order[20] for Hewlett Packard computers and printers, which was quoted in US dollars.[21] Prior to this, FAT KEE likewise sent ONLINE a Purchase Order[22] dated October 23, 1997 and the same was denominated in US dollars.[23] Payoyo related that, on January 15, 1998, the officials of ONLINE met with Frederick Huang, Jr., the President of FAT KEE, and the latter's lawyer. The parties discussed the payment scheme for the outstanding balance of FAT KEE. ONLINE proposed that the total unpaid amount of more than US\$136,000.00 shall be divided in two, such that 50% of the amount was to be paid in US dollars and the other half was to be settled in Philippine pesos. The exchange rate to be applied to the Philippine peso component was P41:US\$1.[24] FAT KEE then offered to renegotiate the exchange rate, offering to pay P35:US\$1, but ONLINE rejected the same. According to Payoyo, the parties subsequently agreed to a P40:US\$1 conversion rate.[25]

Lastly, ONLINE called on Sonia Magpili to likewise testify to the fact that FAT KEE renegotiated with ONLINE for the conversion rate of P40:US\$1. Magpili stated that she was then the Executive Vice President of ONLINE[26] and was among the company officials who met with FAT KEE President Huang on January 15, 1998.[27] Discussed in the meeting was the proposal to split the payment to be made by FAT KEE.[28] Frederick Huang, Jr. subsequently called the office of ONLINE to request for the lowering of the exchange rate to P40:US\$1, to which ONLINE agreed.[29] FAT KEE made partial payments from March 1998, but later tried to

negotiate again for a lower exchange rate. Magpili testified that ONLINE no longer agreed to this proposal as the account of FAT KEE had already fallen due as of December 1997.[30] On cross-examination, however, Magpili admitted that FAT KEE did not execute any written confirmation to signify its agreement to the proposal to split its outstanding balance and the conversion rate of P40:US\$1.[31]

FAT KEE, afterwards, presented its testimonial evidence, calling forth Frederick Huang, Jr. to the witness stand. Pertinently, Huang testified that the exchange rate they used in order to compute their total unpaid obligation to ONLINE was P34:US\$1. Huang explained that this figure was arrived at by taking into account the SOA dated December 9, 1997. Therein, the unpaid dollar amounts in the assailed Invoice Nos. 4680 and 4838[32] were denominated in Philippine pesos as P2,343,414.33 and P1,502,033.06, respectively. A simple computation[33] then revealed that the rate of exchange rate thereon was P34:US\$1.[34] FAT KEE also applied the said rate on Invoice Nos. 5090 and 5096,[35] such that the dollar amounts stated thereon were respectively converted to P384,107.52 and P466,480.00.

Huang also stated that FAT KEE quoted in US dollars the Purchase Order dated November 26, 1997, since the same was upon the instructions of Payoyo. During that time, the fluctuations of the Philippine peso were rapid and the Accounting Department of ONLINE informed Huang that the computer equipment ordered by FAT KEE would not be delivered unless FAT KEE issued a Purchase Order in US dollars. Huang also said that there was no agreement between FAT KEE and ONLINE for the payment in US dollars, nor did the parties agree to a specific exchange rate.[36] On January 15, 1998, the parties met, but they failed to reach any agreement regarding the exchange rate and the payment in US dollars. The next day, ONLINE, through Payoyo, wrote a letter to FAT KEE, confirming their supposed agreement on an exchange rate of P41:US\$1.[37] On February 23, 1998, Payoyo again wrote to Huang, informing him that the new exchange rate to be applied was P40:US\$1. On March 2, 1998, Huang communicated to Payoyo, stating that the Board of Directors of FAT KEE agreed to settle the outstanding balance of the company at the rate of P37:US\$1.[38] Huang then testified that FAT KEE continued to pay its obligation in Philippine pesos until its obligation was fully paid.[39] Later, FAT KEE received demand letters from ONLINE, directing the former to pay the amount of P756,095.05.[40]

Mayumi Huang also testified for FAT KEE. Being the Operations Manager[41] of FAT KEE, she admitted that she was the one who issued the Purchase Order dated November 26, 1997 to ONLINE for \$13,720.00.[42]

As rebuttal evidence, ONLINE offered the testimony of Melissa Tan to prove that the SOA dated December 9, 1997 that was purportedly issued by ONLINE was in fact unauthorized and FAT KEE was duly informed of the same. Tan stated that she was the Credit and Collection Supervisor for ONLINE.[43] Sometime in December 1997, Magpili showed her a copy of the SOA dated December 9, 1997, asking Tan if she approved the said document. Tan declared that she did not issue the SOA, nor was she even aware of its issuance.[44] Tan explained that the absence of her signature on the SOA meant that the same was not authorized by ONLINE. The standard procedure was for Tan to review and approve such documents first before the same were issued.[45] Tan noted that the SOA was prepared by Edwin Morales, an Accountant of ONLINE. When confronted about the SOA, Morales reasoned that he merely wanted to give FAT KEE an initial computation of the latter's outstanding balance, but he mistakenly included the billings that were denominated in US dollars.[46] At the meeting between ONLINE and FAT KEE on January 15, 1998, the latter was informed that the SOA was not official and the parties negotiated the applicable conversion rate.[47] Upon cross-examination, Tan revealed that ONLINE did not rectify or correct the entries contained in the SOA. No disciplinary action was likewise taken against Morales for the unauthorized issuance of the said document.[48]

Finally, FAT KEE presented the testimony of Frederick Huang, Jr. as surrebuttal evidence. Huang again maintained that the parties failed to reach an agreement as regards the payment of FAT KEE's obligations to

ONLINE, as well as the proposal to apply the exchange rate of P37:US\$1.[49]

In a Decision dated November 7, 2000, the RTC dismissed the complaint of ONLINE, ratiocinating thus:

After assessing the evidence presented by both parties, the court is of the belief that [ONLINE] failed to establish its claim against [FAT KEE]. While indeed [FAT KEE] purchased computer printers from [ONLINE], [the latter] has not established the fact that at the time when the obligation became due and demandable, there was an agreement as to the conversion rate between [ONLINE] and [FAT KEE] as to the rate of exchange from US dollars into Philippine Peso in the payment of purchase price of printers. When there is no agreement between [ONLINE] and [FAT KEE] as to the rate of exchange from US dollars to Philippine peso, while it is correct to say that it is the prevailing rate of exchange at the time when the obligation became due and demandable, the prevailing rate should be used that prevailing rate, is the rate pegged by [ONLINE], which was contained in the Statement of Account dated 9 December 1997.

x x x Edwin Morales in the Statement of Account he sent to [FAT KEE] dated 9 December 1997 computed the obligation of [FAT KEE] in Philippine currency and after computing the total obligation, by simple mathematical computation, it appears indeed that the exchange rate used by [ONLINE] is PHP34.00 for every US\$1.00. [ONLINE], therefore, is estopped from claiming that the rate of exchange rate should be at the rate of either PHP41.50 or PHP40.00 per US\$1.00, as the rate which [ONLINE] itself used is PHP34.00 for every US\$1.00 by [ONLINE's] own computation. [FAT KEE] even paid an excess of PHP62,539.24.

Considering that [FAT KEE] have fully paid the amount and there being really no dispute as to the exchange rate by [ONLINE's] own admission in its Statement of Account dated 9 December 1997, it is but proper to consider that [FAT KEE] has fully paid its obligation with [ONLINE] as evidenced by various receipts presented during the trial.

x x x x

With all these, considering that [ONLINE] failed to prove through preponderance of evidence its claim against [FAT KEE] and therefore [ONLINE's] complaint must be dismissed.

However, [FAT KEE] in its counterclaim claimed among others that [FAT KEE] is entitled to attorney's fees in the amount of P250,000.00. It having been satisfactorily proven by [FAT KEE] that [it] is entitled to attorney's fees, the court, in its discretion, awards to [FAT KEE] the amount of PHP100,000.00 for and as attorney's fees, which [ONLINE] must pay to [FAT KEE] considering that the claim of [ONLINE] is incorrect and its complaint baseless.

WHEREFORE, premises considered, [judgment] is hereby rendered in favor of [FAT KEE] and as against [ONLINE]. As a consequence, [ONLINE's] Complaint is dismissed, and [ONLINE] is therefore adjudged to pay [FAT KEE] the amount of P100,000.00 for and as attorney's fees.

Costs against [ONLINE].[50]

On February 20, 2001, ONLINE filed a Motion for Reconsideration[51] of the above decision. ONLINE argued that estoppel may not be invoked against it as FAT KEE did not act or rely on the representations in the SOA dated December 9, 1997. ONLINE maintained that FAT KEE was informed that the SOA was erroneous and unauthorized and the parties subsequently met and negotiated on the exchange rate to be applied. Likewise, ONLINE challenged the award of attorney's fees in favor of FAT KEE.

In an Order dated July 25, 2001, the RTC denied ONLINE's motion for lack of merit. Said the RTC:

The principle of Estoppel properly applies to [ONLINE] brought about by the Statement of Account dated December 9, 1997 which was sent to [FAT KEE] through [ONLINE's] own collection clerk employee, Mr. Edwin Morales. While, indeed, there is no exchange rate agreed upon between [ONLINE] and [FAT KEE],

[the latter] actually made payments using the exchange rate of P34 for every US dollar after the Statement of Account dated December 9, 1997 was received by [FAT KEE]. Neither was there any formal action to correct the alleged unauthorized Statement of Account received by [FAT KEE] nor was the employee, Mr. Edwin Morales meted appropriate disciplinary action for the acts. On the contrary, it was only during the rebuttal stage of the case when [ONLINE] tried to rectify the alleged mistake committed and not at the time when the same was discovered. Moreover, [ONLINE's] claim that [FAT KEE] did not reply on the Statement of Account aforestated is not entirely correct as the payments made by [FAT KEE] which [ONLINE] accepted were actually based on the Statement of Account using the rate of exchange of P34 for every US Dollar.

In the matter of the award for Attorney's fees, the same is justified and reasonable under the circumstances. The complaint being unfounded and baseless, [FAT KEE] was forced to litigate and to engage the services of counsel for the protection of its interest. The Court therefore finds justifiable and equitable reason for attorney's fees to be awarded.

WHEREFORE, premises considered, for lack of substantial merit and for reasons stated above, the Motion for Reconsideration is hereby DENIED.[52]

ONLINE thereafter filed a Notice of Appeal,[53] elevating the case to the Court of Appeals.

On September 26, 2005, the Court of Appeals rendered a Decision, reversing the judgment of the RTC in this wise:

We find the appeal meritorious.

In the proceedings below, both parties harped on the propriety of using the exchange rate of P40:\$1 as against the stated rate contained in the December SOA which the court a quo fixed at P34.00. However, after scrutinizing the pieces of evidence submitted by the contending parties, We found the pronouncement of the court a quo wanting of bases and support. Thus, in light of this conclusion, this Court is constrained to take exception from the findings of the trial court considering that there were pieces [of] evidence which had been misappreciated that will compel a contrary conclusion if properly taken into account.[54]

On the issue of estoppel on the part of ONLINE, the Court of Appeals adjudged that:

As borne by the records, ONLINE and FAT KEE had previous dealings with each other. Out of all their transactions in the month of November 1997, six of these were transacted using the US Currency in their price quotations; two of these were actually paid in said notes. While We agree that Invoice Nos. 4680 and 4838 were included in the December SOA, it should not however, be assumed that the same was the applicable conversion rate upon which FAT KEE relied on.

x x x x

Even granting that FAT KEE was of the impression that P34:\$1 was the applicable rate for its obligation, this was however, immediately rectified by ONLINE when the parties met on January 1998, barely two months from FAT KEE's receipt of the subject statement of account and before any payment for the same was advanced by FAT KEE, in order to negotiate the conversion rate of its obligation. x x x The fact that FAT KEE started paying its obligation under the dollar denominated invoices only on March 1998 fortifies the fact that both parties did not intend to be bound by the December SOA with respect to the subject invoices.

Clearly, no estoppel as regards the December SOA may be ascribed to ONLINE because FAT KEE was not misled by ONLINE's actuations, and even assuming arguendo that it was in fact misled, it still cannot invoke the principle as it was clearly negligent in not fully scrutinizing the receipts issued to it, which on their face made specific reference as to where payment was to be applied. x x x In pegging the amount at P34:\$1, a peculiar situation will result where FAT KEE will be allowed to gain from defaulting payment despite absolute knowledge of its transactions with ONLINE. x x x.

x x x Other than its bare assertion, there were no indications to show that [FAT KEE] sought to correct the alleged irregular transactions. Neither is there any evidence on record demonstrating that sometime after making the purchase order, it made known its intention to take exception from the currency to be used. By and large, FAT KEE cannot now be permitted to escape liability by simply alleging that the subject transactions were made solely upon the insistence of ONLINE.

x x x x

In this present recourse, it is undeniable that FAT KEE had given its assent to the foreign currency-based transaction with full knowledge of its probable effects and consequences that may spring therefrom. This is evident from its acquiescence to the varying rates of exchange that ONLINE was charging the dollar transactions and its willingness to negotiate on the conversion rate. x x x And while this single proof of payment may not be regarded as a customary business practice, this however, may be taken as an indicium of FAT KEE's concurrence to enter into a transaction that involves a foreign currency.[55] (Emphases ours.)

As regards the applicable conversion rate, the appellate court held that:

Nevertheless, despite the above findings, this Court does not agree that the rate of conversion has been pegged by the parties at P40:\$1. It is evident that when the parties met on 15 January 1999, ONLINE's proposal to FAT KEE to use the exchange rate of P41:\$1 was declined by the latter and instead, FAT KEE made a counter offer of P35:\$1. Further renegotiations then ensued with ONLINE proposing a rate of P40:\$1. On the other hand, FAT KEE, in a correspondence dated 2 March 1998, offered to use the exchange rate of P37:\$1 for the satisfaction of its remaining obligation. Thereafter, no further negotiations took place. Significantly, on 17 March 1998, FAT KEE started to make payments for its remaining obligations, which ONLINE accepted without any protest.

In fine, if ONLINE is to be held in estoppel, it is not from the issuance of the December SOA but rather from the last offer which pegged the exchange rate at the ratio of 37:1. To Our mind, the silence of ONLINE and its receipt of the FAT KEE's payment fifteen (15) days after the last correspondence may be taken as an implied acquiescence to the latter's offer to pay in Philippine currency pegging the exchange rate at P37.00 to a US dollar.

Thereby, from its actions subsequent to FAT KEE's last offer, ONLINE is now barred from adopting an inconsistent position that would eventually cause loss or injury to another. x x x

On the other hand, ONLINE's bare denial that this last offer was refused by the company simply contradicts the course of its action and at best, self serving. Accordingly, utilizing the ratio of 37:1, FAT KEE's obligation under Invoice Nos. 4680, 4838, 5090 and 5096 stands in the total amount of P5,148,528.91. Admittedly, FAT KEE had already made payments for these invoices in the total amount of P4,758,574.18 from 17 March to 19 May 1998 and thus, only the amount of P389,954.73 remains unpaid.[56]

Thus, the Court of Appeals resolved the case as follows:

The only issue now left for resolution is where ONLINE's claim should be computed at the fixed rate of exchange or the rate prevailing at the time of payment of the obligation.

Under Republic Act No. 8183, repealing Republic Act No. 529, parties to a contract may now agree that the obligation or transaction shall be settled in any currency other than the Philippine Currency at the time of payment. The repeal of R.A. No. 529 by R.A. No. 8183 has the effect of removing the prohibition on the stipulation of currency other than Philippine currency, such that obligations or transactions may now be paid in the currency agreed upon by the parties. Just like R.A. No. 529, however, the new law does not provide for the applicable rate of exchange for the conversion of foreign currency-incurred obligations in their peso equivalent. It follows, therefore, that the jurisprudence established in R.A. No. 529 regarding the rate of conversion remains applicable.

Thus, in *Asia World Recruitment, Inc. v. National Labor Relations Commission*, the High Court, applying R.A. No. 8183, sustained the ruling of the NLRC that obligations in foreign currency may be discharged in Philippine currency based on the prevailing rate at the time of payment. The wisdom on which the jurisprudence interpreting R.A. No. 529 is based, equally holds true with R.A. No. 8183. Verily, it is just and fair to preserve the real value of the foreign exchange-incurred obligation to the date of its payment.

In this present recourse, We observed that ONLINE failed to sufficiently establish that the obligation was payable in US currency. On the other hand, its actuations of negotiating for the mode of payment and allowing FAT KEE to settle its obligation in pesos are indicia of the want of any unequivocal agreement between the parties. With no definite agreement that the transaction shall be settled in US Currency at the time of payment and considering the agreement of the parties to peg the rate at P37:\$1, it now becomes an ineluctable conclusion that FAT KEE's unpaid obligation shall be based at the rate of P37:\$1 for the reasons discussed above. Further validating this is ONLINE's insistence that FAT KEE was liable to pay the amount of P756,095.05 and its allegations that the remaining unsettled controversy was confined to the amount of the applicable exchange rate. Thus, it now becomes indubitable that the obligation was payable in a fixed rate.

Prescinding from the foregoing, We find that the exchange rate to be applied on FAT KEE's obligation is the ratio of 37:1, and after deducting the amounts already paid, FAT KEE still owes ONLINE the amount of P389,954.73 excluding interest at the rate of 28% per annum, as stated on the face of the pertinent invoices, commencing from July 1998. In the same manner and for having been compelled to institute this suit to vindicate its rights, attorney's fees are also awarded to the [ONLINE] but the same is reduced to 10% of the total award.

WHEREFORE, the foregoing considered, the appeal is hereby GRANTED and the decision of the court a quo REVERSED and SET ASIDE. Accordingly, the [FAT KEE] is ordered to pay the amount of P389,954.73 to [ONLINE] with interest at the rate [of] 28% per annum from July 1998 until paid, plus 10% of the total award representing attorney's fees.[57]

FAT KEE filed a Motion for Reconsideration[58] of the above decision, but the Court of Appeals denied the same in a Resolution dated January 26, 2006.

Hence, this petition.

FAT KEE invokes for resolution the following legal issues, to wit:

I

THE PETITION IS COMPLETE IN FORM AND SUBSTANCE

II

F.A.T. KEE DID NOT AGREE TO ENTER INTO A FOREIGN CURRENCY TRANSACTION

III

THERE WAS NO AGREEMENT TO USE A 1:37 PESO TO DOLLAR EXCHANGE RATE

IV

ONLINE WAS ESTOPPED BY THE 9 DECEMBER 1997 STATEMENT OF ACCOUNT.

The Court shall determine the procedural questions first.

FAT KEE contests the argument of ONLINE that the instant petition is fatally defective for the failure of the former to attach the transcript of stenographic notes (TSN) of the RTC proceedings. FAT KEE counters that there is no need to annex the said TSN given that ONLINE does not dispute the accuracy of the quoted portions of the

transcripts and the petition does not request for a reevaluation of the evidence of the parties. Assuming *arguendo* that the TSN should have been attached to the petition, FAT KEE begs for the relaxation of the rules so as not to frustrate the ends of substantive justice. FAT KEE also rejects the contention of ONLINE that the petition raises only factual issues, which are not proper in a petition for review on certiorari. FAT KEE argues that the Court of Appeals likewise erred in re-evaluating the evidence and substituted its own interpretation of the testimonies of the witnesses.

On this preliminary procedural issue, we rule that the non-attachment of the relevant portions of the TSN does not render the petition of FAT KEE fatally defective.

Rule 45, Section 4 of the Rules of Court indeed requires the attachment to the petition for review on certiorari "such material portions of the record as would support the petition." [59] However, such a requirement was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, "the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate." [60] More importantly, Section 8 of Rule 45 declares that "[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice." [61] Given that the TSN of the proceedings before the RTC forms part of the records of the instant case, the failure of FAT KEE to attach the relevant portions of the TSN was already cured by the subsequent elevation of the case records to this Court. This pronouncement is likewise in keeping with the doctrine that procedural rules should be liberally construed in order to promote their objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding. [62]

As to the substantive issues raised in the instant petition, the Court finds that, indeed, questions of fact are being invoked by FAT KEE. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. [63]

Rule 45, Section 1 of the Rules of Court dictates that a petition for review on certiorari "shall raise only questions of law, which must be distinctly set forth." [64] This rule is, however, subject to exceptions, [65] one of which is when the findings of fact of the Court of Appeals and the RTC are conflicting. Said exception applies to the instant case.

Substantially, FAT KEE primarily argues there was neither any agreement to enter into a foreign currency-based transaction, nor to use a dollar exchange rate of P37:US\$1. The invoice receipts denominated in US dollars were unilaterally prepared by ONLINE. Similarly, the Accounting Department of ONLINE required that the Purchase Order to be submitted by FAT KEE be denominated in US dollars and Frederick Huang, Jr. merely complied with the same upon the instructions of Payoyo. Contrary to ONLINE's claim, it issued the SOA dated December 9, 1997 with the alleged unpaid obligation of FAT KEE quoted in Philippine pesos. FAT KEE also takes issue with the ruling of the Court of Appeals that it assented to the payment in US dollars of the transactions covered under Invoice Nos. 4680, 4838, 5090 and 5096. Lastly, FAT KEE reiterates the ruling of the RTC that ONLINE was estopped from seeking payment in US dollars since the outstanding obligation of FAT KEE was denominated in Philippine pesos in the SOA dated December 9, 1997. Claiming that the SOA was its only basis for payment, FAT KEE allegedly paid its obligations in accordance therewith and ONLINE duly accepted the payments.

After a meticulous review of the records, we resolve to deny the petition.

FAT KEE subscribes to the rulings of the RTC in the Decision dated November 7, 2000 and the Order dated July 25, 2001. The trial court found that there was no agreement as to the exchange rate for the conversion of the outstanding balance of FAT KEE to Philippine pesos. A reading of the RTC rulings reveals that the trial court principally relied on the SOA dated December 9, 1997 and the testimony of Frederick Huang, Jr. in setting the exchange rate at P34:US\$1. The RTC ruled that ONLINE was estopped from claiming otherwise since FAT KEE actually paid its outstanding balance in accordance with the SOA. Furthermore, the RTC determined that ONLINE failed to undertake any action to correct the SOA, which the latter claimed was unauthorized. No disciplinary action was likewise taken against Edwin Morales, the employee who allegedly issued the SOA without authority.

In *British American Tobacco v. Camacho*,^[66] the Court emphasized the doctrine of estoppel as follows:

Estoppel, an equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. The principle is codified in Article 1431 of the Civil Code, which provides:

Through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

Estoppel can also be found in Rule 131, Section 2 (a) of the Rules of Court, viz:

Sec. 2. Conclusive presumptions. -- The following are instances of conclusive presumptions:

(a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it.

The elements of estoppel are: first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.^[67]

In the instant case, we find that FAT KEE cannot invoke estoppel against ONLINE for the latter's issuance of the SOA on December 9, 1997. The Court agrees with the Court of Appeals' ruling that any misconception on the part of FAT KEE engendered by the issuance of the SOA should have already been rectified when the parties subsequently met on January 15, 1998. The testimonial evidence of both ONLINE and FAT KEE establish that, during the meeting, the parties tried but failed to reach an agreement as regards the payment of FAT KEE's outstanding obligation and the exchange rate to be applied thereto. Whether or not FAT KEE was duly informed of the fact that the SOA was unauthorized is no longer of much importance. By their act of submitting their respective proposals and counter-proposals on the mode of payment and the exchange rate, FAT KEE and ONLINE demonstrated that it was not their intention to be further bound by the SOA, especially with respect to the exchange rate to be used. Moreover, FAT KEE only started making payments vis-à-vis the subject invoice receipts on March 17, 1998, or two months after the aforementioned meeting.

At this point, *Mijares v. Court of Appeals*^[68] is instructive in declaring that:

One who claims the benefit of an estoppel on the ground that he has been misled by the representations of another must not have been misled through his own want of reasonable care and circumspection. A lack of diligence by a party claiming an estoppel is generally fatal. If the party conducts himself with careless

indifference to means of information reasonably at hand, or ignores highly suspicious circumstances, he may not invoke the doctrine of estoppel. Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth, and accordingly estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it, at least where actual fraud has not been practised on the party claiming the estoppel.[69]

Thus, after participating in the meeting on January 15, 1998, submitting its own proposals and further renegotiating for the lowering of the exchange rate, FAT KEE cannot anymore insist that it was completely under the impression that the applicable exchange rate was P34:US\$1 as purportedly indicated in the December 9, 1997 SOA.

Anent the proper exchange rate to be applied in this case, we likewise uphold the ruling of the Court of Appeals that estoppel finds application in this case as regards the implied acquiescence of ONLINE to the use of the P37:US\$1 exchange rate. On March 2, 1998, after a series of proposals on the conversion rate to be applied, FAT KEE finally offered to settle its outstanding balance at the rate of P37:US\$1. To this offer, ONLINE did not respond. Thereafter, on March 17, 1998, FAT KEE began remitting payments continuously, which ONLINE duly accepted. Following the dictum stated in *British American Tobacco*, ONLINE communicated, through its silence and acceptance of payments, that it was agreeable to the P37:US\$1 rate. Indeed, ONLINE should not be allowed to adopt a contrary position to the detriment of FAT KEE.

Premises considered, we find therefore that the applicable exchange rate to determine the outstanding balance of FAT KEE is P37:US\$1. We note, however, that the Court of Appeals inadvertently erred in computing the remaining balance to be paid by FAT KEE. According to Invoice Nos. 4680, 4838, 5090 and 5096, the total unpaid amount is US\$136,149.43. By applying P37:US\$1 rate on the unpaid amount, the resulting balance is P5,037,528.91, not P5,148,528.91 as determined by the Court of Appeals. As FAT KEE has already paid a total amount of P4,758,574.18,[70] the total unpaid amount owed to ONLINE is P278,954.73.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Decision dated September 26, 2005 of the Court of Appeals in CA-G.R. CV No. 71910 is hereby AFFIRMED with MODIFICATION that F.A.T. Kee Computer Systems, Inc. is ordered to pay the amount of P278,954.73 to Online Networks International, Inc., with interest at the rate of 28% per annum from July 1998 until fully paid, plus 10% of the total award as attorney's fees. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 11-31.

[2] *Id.* at 32-42; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas-Peralta, concurring.

[3] *Id.* at 129-135; penned by Judge Oscar B. Pimentel.

[4] Records, pp. 1-7.

[5] *Id.* at 100-103.

[6] *Id.*

[7] *Id.* at 3.

[8] The total amount due as computed by ONLINE, plus 28% interest per annum for three months, was P3,012,636.17. However, this is inaccurate. The said amount is the result obtained upon the application of the 28% interest on the alleged unpaid balance of P2,943,944.14 for a period of one (1) month only. A recomputation of the figures shows that the correct total amount should have been P3,150,020.23.

[9] Records, pp. 37-45.

[10] Id. at 175.

[11] TSN, July 29, 1999, p. 6.

[12] Id. at 9.

[13] Id. at 14-15.

[14] Id. at 18.

[15] Id. at 20.

[16] Id. at 24.

[17] Id. at 24-25.

[18] Records, pp. 118-119.

[19] TSN, July 29, 1999, p. 27.

[20] The Purchase Order was dated November 26, 1997; records, p. 120.

[21] TSN, August 5, 1999, p. 7.

[22] Records, p. 121.

[23] TSN, August 5, 1999, pp. 12-13.

[24] Id. at 20-22.

[25] Id. at 26.

[26] TSN, September 7, 1999, p. 7.

[27] Id. at 9-10.

[28] Id. at 12-13.

[29] Id. at 14-15.

[30] Id. at 17.

[31] Id. at 21.

[32] The amount stated in Invoice No. 4680 was \$66,954.70, while the amount in Invoice No. 4838 was \$44,177.45.

[33] By dividing the amounts in Philippine pesos by the amounts in US dollars.

[34] TSN, November 11, 1999, pp. 18-20.

[35] The amount stated in Invoice No. 5090 was \$11,297.28, while the amount in Invoice No. 5096 was

\$13,720.00.

[36] TSN, February 23, 2000, pp. 13-14.

[37] Id. at 16.

[38] Id. at 17.

[39] Id. at 20-21.

[40] Id. at 22.

[41] TSN, May 11, 2000, p. 20.

[42] Id. at 21-22.

[43] TSN, June 15, 2000, p. 5.

[44] Id. at 7-9.

[45] Id. at 9-10.

[46] Id. at 13-14.

[47] Id. at 15-16.

[48] Id. at 18-20.

[49] Id. at 29.

[50] Rollo, pp. 132-134.

[51] Records, pp. 265-287.

[52] Id. at 311-312.

[53] Id. at 313-316.

[54] Rollo, p. 36.

[55] Id. at 36-39.

[56] Id. at 39-40.

[57] Id. at 40-42.

[58] CA rollo, pp. 201-208.

[59] SEC. 4. Contents of petition. - The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last

paragraph of section 2, Rule 42. (Emphasis ours.)

[60] SEC. 7. Pleadings and documents that may be required; sanctions. - For purposes of determining whether the petition should be dismissed or denied pursuant to section 5 of this Rule, or where the petition is given due course under section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.

[61] See *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN)*, 454 Phil. 463 (2003).

[62] Rules of Court, Rule 1, Section 6.

[63] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 581.

[64] SEC. 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (As amended by A.M. No. 07-7-12-SC.)

[65] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.)

[66] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

[67] *Id.* at 536-537.

[68] 338 Phil. 274 (1997).

[69] *Id.* at 286-287.

[70] *Records*, pp. 104-111.

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