

ELENA JANE DUARTE, PETITIONER, VS. MIGUEL SAMUEL A.E. DURAN, RESPONDENT.

G.R. No. 173038. September 14, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Preponderance of evidence only requires that evidence be greater or more convincing than the opposing evidence.[1]

Assailed in this Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court are the October 26, 2005 Decision[3] and May 22, 2006 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 84461.

Factual Antecedents

This petition arose from a suit[5] for collection of sum of money filed by respondent Miguel Samuel A.E. Duran[6] against petitioner Elena Jane Duarte with

Branch 5 of the Municipal Trial Court in Cities (MTCC), Cebu.

According to respondent, on February 14, 2002, he offered to sell a laptop computer for the sum of P15,000.00 to petitioner thru the help of a common friend, Josephine Dy (Dy).[7] Since petitioner was undecided, respondent left the laptop with petitioner for two days.[8] On February 16, 2002, petitioner told respondent that she was willing to buy the laptop on installment.[9] Respondent agreed; thus, petitioner gave P5,000.00 as initial payment and promised to pay P3,000.00 on February 18, 2002 and P7,000.00 on March 15, 2002.[10] On February 18, 2002, petitioner gave her second installment of P3,000.00 to Dy, who signed the handwritten receipt[11] allegedly made by petitioner as proof of payment.[12] But when Dy returned to get the remaining balance on March 15, 2002, petitioner offered to pay only P2,000.00 claiming that the laptop was only worth P10,000.00.[13] Due to the refusal of petitioner to pay the remaining balance, respondent thru counsel sent petitioner a demand letter dated July 29, 2002.[14]

Petitioner, however, denied writing the receipt dated February 18, 2002,[15] and receiving the demand letter dated July 29, 2002.[16] Petitioner claimed that there was no contract of sale.[17] Petitioner said that Dy offered to sell respondent's laptop but because petitioner was not interested in buying it, Dy asked if petitioner could instead lend respondent the amount of P5,000.00.[18] Petitioner agreed and in turn, Dy left the laptop with petitioner.[19] On February 18, 2002, Dy came to get the laptop but petitioner refused to give it back because the loan was not yet paid.[20] Dy then asked petitioner to lend an additional amount of P3,000.00 to respondent who allegedly was in dire need of money.[21] Petitioner gave the money under agreement that the amounts she lent to respondent would be considered as partial payments for the laptop in case she decides to buy it.[22] Sometime in the first week of March 2002, petitioner informed respondent that she has finally decided not to buy the laptop.[23] Respondent, however, refused to pay and insisted that petitioner purchase the laptop instead.[24]

Ruling of the Municipal Trial Court in Cities

On June 2, 2003, the MTCC rendered a Decision[25] in favor of respondent. It found the receipt dated February 18, 2002 and the testimonies of respondent and his witness, Dy, sufficient to prove that there was a contract of sale between the parties.[26] Thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay plaintiff the following measure of damages:

- (a) Actual damages in the amount of Seven Thousand (P7,000.00) Pesos with interest thereon at 12% per annum from July 29, 2002 until fully paid;
- (b) Attorney's fees in the amount of Five Thousand (P5,000.00) Pesos; and
- (c) Litigation expenses in the amount of Three Thousand (P3,000.00) Pesos.

SO ORDERED.[27]

Ruling of the Regional Trial Court

On appeal,[28] the Regional Trial Court (RTC) of Cebu, Branch 12, reversed the MTCC Decision. Pertinent portions of the Decision,[29] including the dispositive portion, read:

x x x x

As shown in the records of the case, this Court finds the alleged receipt issued by the witness Josephine Dy [in] her own handwriting a mere product of machination, trickery and self-serving. It shows no proof of conformity or acknowledgment on the part of the defendant that indeed she agreed on the stipulations. Thus, it cannot be given any credence and ultimately, did not bind her.

x x x x

WHEREFORE, the assailed Decision is REVERSED and SET ASIDE. The defendant Elena Jane Duarte is hereby directed to return the computer laptop to plaintiff Miguel Samuel A.E. Duran and plaintiff is directed to return the money borrowed from defendant.

SO ORDERED.[30]

Respondent moved for reconsideration but the same was denied by the RTC in an Order[31] dated May 13, 2004.

Ruling of the Court of Appeals

On June 1, 2004, respondent filed a Petition for Review[32] with the CA. Finding the petition meritorious, the CA reversed the RTC Decision and reinstated the Decision of the MTCC. The CA said that the RTC erred in not giving weight and credence to the demand letter dated July 29, 2002 and the receipt dated February 18, 2002.[33] The CA pointed out that petitioner failed to overturn the presumption that the demand letter dated July 29, 2002 sent by respondent's counsel by registered mail was received by her.[34] Neither was she able to deny under oath the genuineness and due execution of the receipt dated February 18, 2002.[35] Thus, the fallo of the Decision[36] reads:

WHEREFORE, premises considered, the petition for review is hereby GRANTED. The decision of the Regional Trial Court, Branch 12, Cebu City is REVERSED and the judgment of Municipal Trial Court in Cities Branch 5, Cebu City is REINSTATED. No pronouncement as to costs.

SO ORDERED.[37]

Petitioner filed a Motion for Reconsideration[38] which the CA denied in a Resolution[39] dated May 22, 2006.

Issues

Hence, the present recourse by petitioner raising five issues, to wit:

- Whether x x x the [CA] committed grave error in not resolving the issue as to whether or not the petition for review that respondent filed in the said court was filed out of time.
- Whether x x x the [CA] committed grave error when it reinstated the judgment of the [MTCC], Branch 5, Cebu City which awarded excessive attorney's fees and litigation expenses without factual and legal justification since the awards were merely stated in the dispositive portion of the decision and the factual and legal bases thereof were not discussed in the text thereof.
- Whether x x x the [CA] committed grave error in holding that the denial by the petitioner of a receipt of the demand letter, sent through registered mail has not overturned the principal presumption of regularity in the performance of duty.
- Whether x x x the [CA] committed grave error in holding that a "receipt" which does not contain the signature of the petitioner is an actionable document.
- Whether x x x the [CA] committed grave error in holding that the evidence available confirm the existence of a contract of sale.[40]

Summed up, the issues boil down to: (1) the timeliness of the filing of the Petition for Review with the CA; (2) the existence of a contract of sale; and (3) respondent's entitlement to attorney's fees and litigation expenses.

Petitioner's Arguments

Petitioner contends that the filing of the Petition for Review with the CA on June 1, 2004 was beyond the reglementary period.[41] Records show that respondent received a copy of the RTC Decision on March 25, 2004, filed a Motion for Reconsideration on April 12, 2004 since April 9 and 10 were holidays and April 11, 2004 was a Sunday, and received a copy of the RTC Order denying his Motion for Reconsideration on May 27, 2004.[42] Thus, he only had one day left from May 27, 2004 within which to file a Petition for Review with the CA.[43]

Petitioner likewise denies the existence of a contract of sale, insisting that the laptop was not sold to her but was given as a security for respondent's debt. To prove that there was no contract of sale, petitioner calls attention to respondent's failure to present a written contract of sale.[44] She claims that under the Statute of Frauds, a contract of sale to be enforceable must be in writing.[45] She also imputes error on the part of the CA in giving weight and credence to the receipt dated February 18, 2002 and the demand letter dated July 29, 2002.[46] She claims that the receipt dated February 18, 2002, which she denies having written, is not an actionable document; thus, there was no need for her to deny under oath its genuineness and due execution.[47] Furthermore, she claims that her denial of the receipt of the demand letter dated July 29, 2002 shifted the burden upon respondent to prove that the letter was indeed received by her.[48] As to the attorney's fees and litigation expenses, petitioner contends that these were not discussed in the MTCC Decision but were only stated in the dispositive portion and that the amount of P5,000.00 is excessive considering that it is 70% of the principal amount claimed by respondent.[49]

Respondent's Arguments

Respondent, on the other hand, argues that his Petition for Review was timely filed with the CA because he has 15 days from receipt of the RTC Order dated May 13, 2004 within which to file a Petition for Review with the CA under Section 1[50] of Rule 42 of the Rules of Court.[51] Respondent defends the ruling of the CA by arguing that the receipt dated February 18, 2002 is an actionable document, and thus, petitioner's failure to deny under oath its genuineness and due execution constitutes an admission thereof.[52] In addition, petitioner's denial of the

receipt of the demand letter dated July 29, 2002 cannot overcome the presumption that the said letter was received in the regular course of mail.[53] Respondent likewise points out that the Statute of Frauds does not apply in the instant case.[54] Finally, respondent claims that the award of attorney's fees and litigation expenses are not excessive and that the factual and legal bases of the award were stated in the body of MTCC Decision.[55]

Our Ruling

The Petition lacks merit.

The Petition for Review was
timely filed with the CA

To standardize the appeal periods and afford litigants fair opportunity to appeal their cases, we ruled in *Neypes v. Court of Appeals*[56] that litigants must be given a fresh period of 15 days within which to appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration under Rules 40, 41, 42, 43 and 45 of the Rules of Court.[57] This ruling, as we have said in *Fil-Estate Properties, Inc. v. Homena-Valencia*,[58] retroactively applies even to cases pending prior to the promulgation of *Neypes* on September 14, 2005, there being no vested rights in the rules of procedure.[59]

Since the instant case was pending in the CA at the time *Neypes* was promulgated, respondent is entitled to a fresh period of 15 days, counted from May 27, 2004, the date respondent received the RTC Order dated May 13, 2004 denying his motion for reconsideration of the RTC Decision dated March 19, 2004 or until June 11, 2004, within which to file his Petition for Review with the CA. Thus, we find that when he filed the Petition for Review with the CA on June 1, 2004, his period to appeal had not yet lapsed.

There was a contract of sale between the parties

As to whether there was a contract of sale between the parties, we hold that there was, and the absence of a written contract of sale does not mean otherwise. A contract of sale is perfected the moment the parties agree upon the object of the sale, the price, and the terms of payment.[60] Once perfected, the parties are bound by it whether the contract is verbal or in writing because no form is required.[61] Contrary to the view of petitioner, the Statute of Frauds does not apply in the present case as this provision applies only to executory, and not to completed, executed or partially executed contracts.[62] In this case, the contract of sale had been partially executed because the possession of the laptop was already transferred to petitioner and the partial payments had been made by her. Thus, the absence of a written contract is not fatal to respondent's case. Respondent only needed to show by a preponderance of evidence that there was an oral contract of sale, which he did by submitting in evidence his own affidavit, the affidavit of his witness Dy, the receipt dated February 18, 2002 and the demand letter dated July 29, 2002.

As regards the receipt dated February 18, 2002, we agree with petitioner that it is not an actionable document. Hence, there was no need for her to deny its genuineness and due execution under oath. Nonetheless, we find no error on the part of the CA in giving full weight and credence to it since it corroborates the testimonies of respondent and his witness Dy that there was an oral contract of sale between the parties.

With regard to petitioner's denial of the receipt of the demand letter dated July 29, 2002, we believe that this did not overturn the presumption of regularity that the letter was delivered and received by the addressee in the regular course of the mail considering that respondent was able to present the postmaster's certification[63] stating that the letter was indeed sent to the address of petitioner. Bare denial of receipt of a mail cannot prevail over the certification of the postmaster, whose official duty is to send notices of registered mail.[64]

As we see it then, the evidence submitted by respondent weigh more than petitioner's bare denials. Other than her denials, no other evidence was submitted by petitioner to prove that the laptop was not sold but was only given as security for respondent's loan. What adds doubt to her story is the fact that from the first week of March 2002, the time she allegedly decided not to buy the laptop, up to the time the instant case was filed against her, she did not exert any effort to recover from respondent the payment of the alleged loan. Her inaction leads us to conclude that the alleged loan was a mere afterthought.

All told, no error can be attributed to the CA in finding that there was a contract of sale between the parties

The award for attorney's fees and
litigation expenses was proper

Neither do we find any error in the award of attorney's fees and litigation expenses.

Article 2208[65] of the Civil Code enumerates the legal grounds which justify or warrant the grant of attorney's fees and expenses of litigation, among which is when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.[66] The reason for the award of attorney's fees and litigation expenses, however, must be set forth in the decision of the court and not in the dispositive portion only.[67] In this case, the factual and legal bases for the award were set forth in the body of the MTCC Decision dated June 2, 2003, to wit:

x x x As the defendant refused to satisfy plaintiff's just and valid claim, the latter was compelled to litigate and engage the services of counsel to protect his interest and in the process, incurred litigation expenses.[68]

The award of attorney's fees in the amount of P5,000.00 is also reasonable and not excessive considering that this case, a simple collection of a measly sum of P7,000.00, has dragged for almost a decade and even had to reach this Court only because petitioner refused to pay. The fact that it is 70% of the principal amount claimed is of no moment as the amount of attorney's fees is discretionary upon the court as long as it is reasonable.[69]

Finally, although not raised as an issue, we find it necessary to modify the legal interest rate imposed on the principal amount claimed. Since the claim involves an obligation arising from a contract of sale and not a loan or forbearance of money, the interest rate should be six percent (6%) per annum of the amount claimed from July 29, 2002.[70] The interest rate of twelve percent (12%) per annum, however, shall apply from the finality of judgment until the total amount awarded is fully paid.[71]

WHEREFORE, the petition is hereby DENIED. The assailed October 26, 2005 Decision and May 22, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 84461 are hereby AFFIRMED with MODIFICATION as to the legal interest imposed on the principal amount claimed. The legal interest shall be at the rate of six percent (6%) per annum from July 29, 2002 and at the rate of twelve percent (12%) per annum from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Booc v. Five Star Marketing Co., Inc., G.R. No. 157806, November 22, 2007, 538 SCRA 42, 52.

[2] Rollo, pp. 4-169 with Annexes "A" to "R" inclusive.

[3] Id. at 32-37; penned by Associate Justice Enrico A. Lanzas and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

[4] Id. at 53-unpaged; penned by Associate Justice Enrico A. Lanzas and concurred in by Associate Justices Isaias P. Dicdican and Pampio A. Abarintos.

[5] Docketed as Civil Case R-46283.

[6] Known to petitioner as Sam Estevanez; rollo, p. 109.

[7] Id. at 33.

[8] Id.

[9] Id.

[10] Id.

[11] February 18, 2002

Received from ELENA JANE A. DUARTE the amt. of Three Thousand Pesos Only (P3,000.00) as second payment of Compaq Laptop amounting to Fifteen Thousand Pesos (P15,000.00). First payment was given last Saturday Feb. 16 Five Thousand Pesos (P5,000.00) total amt. given is (P8,000.00) Eight Thousand only. The balance of Seven Thousand will be given on March 15, 2002.

(signed)

Joy M. Dy

Authorized by SAM ESTEVANEZ (Id. at 65).

[12] Id. at 33.

[13] Id.

[14] Id.

[15] Id. at 99.

[16] Id. at 109.

[17] Id.

[18] Id. at 108.

[19] Id.

[20] Id. at 108-109.

[21] Id. at 109.

[22] Id.

[23] Id.

[24] Id.

[25] Id. at 107-111; penned by Judge Oscar D. Andrino.

[26] Id. at 110.

[27] Id. at 111.

[28] Docketed as Civil Case No. CEB-29351.

[29] Rollo, pp. 112-114; penned by Presiding Judge Aproniano B. Taypin.

[30] Id. at 113-114.

[31] Id. at 115.

[32] Id. at 116-129.

[33] Id. at 34-35.

[34] Id. at 36.

[35] Id. at 35-36.

[36] Id. at 32-37.

[37] Id. at 37.

[38] Id. at 38-51.

[39] Id. at 53-unpaged.

[40] Id. at 212.

[41] Id. at 214.

[42] Id.

[43] Id.

[44] Id. at 226.

[45] Id. at 225-226.

[46] Id. at 219-224.

[47] Id. at 221.

[48] Id. at 219.

[49] Id. at 215-218.

[50] Section 1. How appeal taken; time for filing. - A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[51] Rollo, p. 257.

[52] Id. at 238.

[53] Id. at 245.

[54] Id.

[55] Id. at 250-252.

[56] 506 Phil. 613 (2005).

[57] Id. at 626.

[58] G.R. No. 173942, June 25, 2008, 555 SCRA 345.

[59] Id. at 349.

[60] *Ainza v. Sps. Padua*, 501 Phil. 295, 299 (2005).

[61] *De los Reyes v. Court of Appeals*, 372 Phil. 522, 534 (1999).

[62] *Clemeno, Jr. v. Lobregat*, 481 Phil. 336, 350 (2004).

[63] Rollo, p. 152.

[64] *Aportadera, Sr. v. Court of Appeals*, 242 Phil. 420, 425 (1988).

[65] Article 2208 of the Civil Code provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered;

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[66] *Poliand Industrial Limited v. National Development Co.*, 505 Phil. 27, 69 (2005).

[67] *Mercury Drug Corporation v. Baking*, G.R. No. 156037, May 25, 2007, 523 SCRA 184, 192.

[68] Rollo, p. 111.

[69] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 364.

[70] *Tropical Homes, Inc. v. Court of Appeals*, 338 Phil. 930, 943-945 (1997), citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[71] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

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