WESTMONT INVESTMENT CORPORATION, PETITIONER, VS. AMOS P. FRANCIA, JR., CECILIA ZAMORA, BENJAMIN FRANCIA, AND PEARLBANK SECURITIES, INC., RESPONDENTS.

G.R. No. 194128. December 07, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

At bench is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the (1) July 27, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 84725, which affirmed with modification the September 27, 2004 Decision[2] of the Regional Trial Court, Branch 56, Makati City (RTC) in Civil Case No. 01-507; and (2) its October 14, 2010 Resolution,[3] which denied the motion for the reconsideration thereof.

THE FACTS:

On March 27, 2001, respondents Amos P. Francia, Jr., Cecilia Zamora and Benjamin Francia (the Francias) filed a Complaint for Collection of Sum of Money and Damages[4] arising from their investments against petitioner Westmont Investment Corporation (Wincorp) and respondent Pearlbank Securities Inc. (Pearlbank) before the RTC.

Wincorp and Pearlbank filed their separate motions to dismiss.[5] Both motions were anchored on the ground that the complaint of the Francias failed to state a cause of action. On July 16, 2001, after several exchanges of pleadings, the RTC issued an order[6] dismissing the motions to dismiss of Wincorp and Pearlbank for lack of merit.

Wincorp then filed its Answer,[7] while Pearlbank filed its Answer with Counterclaim and Crossclaim (against Wincorp).[8]

The case was set for pre-trial but before pre-trial conference could be held, Wincorp filed its Motion to Dismiss Crossclaim[9] of Pearlbank to which the latter filed an opposition.[10] The RTC denied Wincorp's motion to dismiss crossclaim.[11]

The pre-trial conference was later conducted after the parties had filed their respective pre-trial briefs. The parties agreed on the following stipulation of facts, as contained in the Pre-Trial Order[12] issued by the RTC on April 17, 2002:

> - The personal and juridical circumstances of the parties meaning, the plaintiffs and both corporate defendants;
>
> - That plaintiffs caused the service of a demand letter on Pearl Bank on February 13, 2001 marked as Exhibit E;
>
> - Plaintiffs do not have personal knowledge as to whether or not Pearl Bank indeed borrowed the funds allegedly invested by the plaintiff from Wincorp; and

> - That the alleged confirmation advices which indicate Pearl Bank as alleged borrower of the funds allegedly invested by the plaintiffs in Wincorp do not bear the signature or acknowledgment of Pearl Bank. (Emphases supplied)

After several postponements requested by Wincorp, trial on the merits finally ensued. The gist of the testimony of Amos Francia, Jr. (Amos) is as follows:

> 1. Sometime in 1999, he was enticed by Ms. Lalaine Alcaraz, the bank manager of Westmont Bank, Meycauayan, Bulacan Branch, to make an investment with Wincorp, the bank's financial investment arm, as it was offering interest rates that were 3% to 5% higher than regular bank interest rates. Due to the promise of a good return of investment, he was convinced to invest. He even invited his sister, Cecilia Zamora and his brother, Benjamin Francia, to join him. Eventually, they placed their investment in the amounts of P1,420,352.72 and P2,522,745.34 with Wincorp in consideration of a net interest rate of 11% over a 43-day spread. Thereafter, Wincorp, through Westmont Bank, issued Official Receipt Nos. 470844[13] and 470845,[14] both dated January 27, 2000, evidencing the said transactions.[15]
>
> 2. When the 43-day placement matured, the Francias wanted to retire their investments but they were told that Wincorp had no funds. Instead, Wincorp "rolled-over" their placements and issued Confirmation Advices[16] extending their placements for another 34 days. The said confirmation advices indicated the name of the borrower as Pearlbank. The maturity values were P1,435,108.61 and P2,548,953.86 with a due date of April 13, 2000.
>
> 3. On April 13, 2000, they again tried to get back the principal amount they invested plus interest but, again, they were frustrated.[17]
>
> 4. Constrained, they demanded from Pearlbank[18] their investments. There were several attempts to settle the case, but all proved futile.

After the testimony of Amos Francia, Jr., the Francias filed their Formal Offer of Evidence.[19] Pearlbank filed its Comment/Objection,[20] while Wincorp did not file any comment or objection. After all the exhibits of the Francias were admitted for the purposes they were offered, the Francias rested their case.

Thereafter, the case was set for the presentation of the defense evidence of Wincorp. On March 7, 2003, three (3) days before the scheduled hearing, Wincorp filed a written motion to postpone the hearing on even date, as its witness, Antonio T. Ong, was unavailable because he had to attend a congressional hearing. Wincorp's substitute witness, Atty. Nemesio Briones, was likewise unavailable due to a previous commitment in the Securities and Exchange Commission.

The RTC denied Wincorp's Motion to Postpone and considered it to have waived its right to present evidence.[21] The Motion for Reconsideration of Wincorp was likewise denied.[22]

On August 14, 2003, Pearlbank filed its Demurrer to Evidence.[23] The RTC granted the same in its Order[24] dated January 12, 2004. Hence, the complaint against Pearlbank was dismissed, while the case was considered submitted for decision insofar as Wincorp was concerned.

On September 27, 2004, the RTC rendered a decision[25] in favor of the Francias and held Wincorp solely liable to them. The dispositive portion thereof reads:

> WHEREFORE, judgment is rendered ordering defendant Westmont Investment Corporation to pay the plaintiffs, the following amounts:
>
> - P3,984,062.47 representing the aggregate amount of investment placements made by plaintiffs, plus 11% per annum by way of stipulated interest, to be counted from 10 March 2000 until fully paid; and

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- 10% of the above-mentioned amount as and for attorney's fees and costs of suit.

SO ORDERED.

Wincorp then filed a motion for reconsideration, but it was denied by the RTC in its Order[26] dated November 10, 2004.

Not in conformity with the pronouncement of the RTC, Wincorp interposed an appeal with the CA, alleging the following arguments:

I. THE REGIONAL TRIAL COURT ERRED WHEN IT HELD THAT WINCORP AS AGENT OF PLAINTIFFS-APPELLEES WAS LIABLE TO THE LATTER NOTWITHSTANDING THE CLEAR WRITTEN AGREEMENT TO THE CONTRARY;

II. THE REGIONAL TRIAL COURT ALSO ERRED WHEN IT HELD THAT PEARLBANK, THE ACTUAL BORROWER AND RECIPIENT OF THE MONEY INVOLVED IS NOT LIABLE TO THE PLAINTIFFS-APPELLEES; and

III. THE REGIONAL TRIAL COURT ERRED IN DISMISSING ALL TOGETHER THE CROSS-CLAIM OF WINCORP AGAINST PEARLBANK.[27]

The CA affirmed with modification the ruling of the RTC in its July 27, 2010 Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the present Appeal is DENIED. The Decision dated 27 September 2004 of the Regional Trial Court, Branch 56, Makati City in Civil Case No. 01-507 is hereby AFFIRMED WITH MODIFICATION of the awards. Defendant-appellant Wincorp is hereby ordered to pay plaintiffs-appellees the amounts of P3,984,062.47 plus 11% per annum by way of stipulated interest to be computed from 13 April 2000 until fully paid and P100,000.00 as attorney's fees and cost of suit."

SO ORDERED.

The CA explained:

After a careful and judicious scrutiny of the records of the present case, together with the applicable laws and jurisprudence, this Court finds defendant-appellant Wincorp solely liable to pay the amount of P3,984,062.47 plus 11% interest per annum computed from 10 March 2000 to plaintiffs-appellees.

Preliminarily, the Court will rule on the procedural issues raised to know what pieces of evidence will be considered in this appeal.

Section 34, Rule 132 of the Rules on Evidence states that:

"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. Evidence not formally offered during the trial can not be used for or against a party litigant. Neither may it be taken into account on appeal.

The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered

shall be excluded and rejected.

Prescinding therefrom, the very glaring conclusion is that all the documents attached in the motion for reconsideration of the decision of the trial court and all the documents attached in the defendant-appellant's brief filed by defendant-appellant Wincorp cannot be given any probative weight or credit for the sole reason that the said documents were not formally offered as evidence in the trial court because to consider them at this stage will deny the other parties the right to rebut them.

The arguments of defendant-appellant Wincorp that the plaintiffs-appellees made an erroneous offer of evidence as the documents were offered to prove what is contrary to its content and that they made a violation of the parol evidence rule do not hold water.

It is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.

As to oral evidence, objection thereto must likewise be raised at the earliest possible time, that is, after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given.

x x x

In the case at bench, a perusal of the records shows that the plaintiffs-appellees have sufficiently established their cause of action by preponderance of evidence. The fact that on 27 January 2000, plaintiffs-appellees placed their investment in the amounts of P1,420,352.72 and P2,522,754.34 with defendant-appellant Wincorp to earn a net interest at the rate of 11% over a 43-day period was distinctly proved by the testimony of plaintiff-appellee Amos Francia, Jr. and supported by Official Receipt Nos. 470844 and 470845 issued by defendant-appellant Wincorp through Westmont Bank. The facts that plaintiffs-appellees failed to get back their investment after 43 days and that their investment was rolled over for another 34 days were also established by their oral evidence and confirmed by the Confirmation Advices issued by defendant-appellant Wincorp, which indicate that their investment already amounted to P1,435,108.61 and P2,548,953.86 upon its maturity on 13 April 2000. Likewise, the fact that plaintiffs-appellees' investment was not returned to them until this date by defendant-appellant Wincorp was proved by their evidence. To top it all, defendant-appellant Wincorp never negated these established facts because defendant-appellant Wincorp's claim is that it received the money of plaintiffs-appellees but it merely acted as an agent of plaintiffs-appellees and that the actual borrower of plaintiffs-appellees' money is defendant-appellee PearlBank. Hence, defendant-appellant Wincorp alleges that it should be the latter who must be held liable to the plaintiffs-appellees.

However, the contract of agency and the fact that defendant-appellee PearlBank actually received their money were never proven. The records are bereft of any showing that defendant-appellee PearlBank is the actual borrower of the money invested by plaintiffs-appellees as defendant-appellant Wincorp never presented any evidence to prove the same.

Moreover, the trial court did not err in dismissing defendant-appellant Wincorp's crossclaim as nothing in the records supports its claim. And such was solely due to defendant-appellant Wincorp because it failed to present any scintilla of evidence that would implicate defendant-appellee PearlBank to the transactions involved in this case. The fact that the name of defendant-appellee PearlBank was printed in the Confirmation Advices as the actual borrower does not automatically makes defendant-appellee PearlBank liable to the plaintiffs-appellees as nothing therein shows that defendant-appellee PearlBank adhered or acknowledged that it is the actual borrower of the amount specified therein.

Clearly, the plaintiffs-appellees were able to establish their cause of action against defendant-appellant

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> Wincorp, while the latter failed to establish its cause of action against defendant-appellee PearlBank.
>
> Hence, in view of all the foregoing, the Court finds defendant-appellant Wincorp solely liable to pay the amount of P3,984,062.47 representing the matured value of the plaintiffs-appellees' investment as of 13 April 2000 plus 11% interest per annum by way of stipulated interest counted from maturity date (13 April 2000).
>
> As to the award of attorney's fees, this Court finds that the undeniable source of the present controversy is the failure of defendant-appellant Wincorp to return the principal amount and the interest of the investment money of plaintiffs-appellees, thus, the latter was forced to engage the services of their counsel to protect their right. It is elementary that when attorney's fees is awarded, they are so adjudicated, because it is in the nature of actual damages suffered by the party to whom it is awarded, as he was constrained to engage the services of a counsel to represent him for the protection of his interest. Thus, although the award of attorney's fees to plaintiffs-appellees was warranted by the circumstances obtained in this case, this Court finds it equitable to reduce the same from 10% of the total award to a fixed amount of P100,000.00.[28]

Wincorp's Motion for Reconsideration was likewise denied by the CA in its October 14, 2010 Resolution.[29]

Not in conformity, Wincorp seeks relief with this Court via this petition for review alleging that -

> PLAINTIFFS-RESPONDENTS HAVE NO CAUSE OF ACTION AGAINST WINCORP AS THE EVIDENCE ON RECORD SHOWS THAT THE ACTUAL BENEFICIARY OF THE PROCEEDS OF THE LOAN TRANSACTIONS WAS PEARLBANK
>
> SUBSTANTIAL JUSTICE DICTATES THAT THE EVIDENCE PROFERRED BY WINCORP SHOULD BE CONSIDERED TO DETERMINE WHO, AMONG THE PARTIES, ARE LIABLE TO PLAINTIFFS-RESPONDENTS[30]

ISSUE

The core issue in this case is whether or not the CA is correct in finding Wincorp solely liable to pay the Francias the amount of P3,984,062.47 plus interest of 11% per annum.

Quite clearly, the case at bench presents a factual issue.

As a rule, a petition for review under Rule 45 of the Rules of Court covers only questions of law. Questions of fact are not reviewable and cannot be passed upon by this Court in the exercise of its power to review. The distinction between questions of law and questions of fact is established. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts.[31] This being so, the findings of fact of the CA are final and conclusive and this Court will not review them on appeal.

While it goes without saying that only questions of law can be raised in a petition for review on certiorari under Rule 45, the same admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[32]

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The Court finds that no cogent reason exists in this case to deviate from the general rule.

Wincorp insists that the CA should have based its decision on the express terms, stipulations, and agreements provided for in the documents offered by the Francias as the legal relationship of the parties was clearly spelled out in the very documents introduced by them which indicated that it merely brokered the loan transaction between the Francias and Pearlbank.[33]

Wincorp would want the Court to rule that there was a contract of agency between it and the Francias with the latter authorizing the former as their agent to lend money to Pearlbank. According to Wincorp, the two Confirmation Advices presented as evidence by the Francias and admitted by the court, were competent proof that the recipient of the loan proceeds was Pearlbank.[34]

The Court is not persuaded.

In a contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the latter's consent.[35] It is said that the underlying principle of the contract of agency is to accomplish results by using the services of others – to do a great variety of things. Its aim is to extend the personality of the principal or the party for whom another acts and from whom he or she derives the authority to act. Its basis is representation.[36]

Significantly, the elements of the contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.[37]

In this case, the principal-agent relationship between the Francias and Wincorp was not duly established by evidence. The records are bereft of any showing that Wincorp merely brokered the loan transactions between the Francias and Pearlbank and the latter was the actual recipient of the money invested by the former. Pearlbank did not authorize Wincorp to borrow money for it. Neither was there a ratification, expressly or impliedly, that it had authorized or consented to said transaction.

As to Pearlbank, records bear out that the Francias anchor their cause of action against it merely on the strength of the subject Confirmation Advices bearing the name "PearlBank" as the supposed borrower of their investments. Apparently, the Francias ran after Pearlbank only after learning that Wincorp was reportedly bankrupt.[38] The Francias were consistent in saying that they only dealt with Wincorp and not with Pearlbank. It bears noting that even in their Complaint and during the pre-trial conference, the Francias alleged that they did not have any personal knowledge if Pearlbank was indeed the recipient/beneficiary of their investments.

Although the subject Confirmation Advices indicate the name of Pearlbank as the purported borrower of the said investments, said documents do not bear the signature or acknowledgment of Pearlbank or any of its officers. This cannot prove the position of Wincorp that it was Pearlbank which received and benefited from the investments made by the Francias. There was not even a promissory note validly and duly executed by Pearlbank which would in any way serve as evidence of the said borrowing.

Another significant point which would support the stand of Pearlbank that it was not the borrower of whatever funds supposedly invested by the Francias was the fact that it initiated, filed and pursued several cases against Wincorp, questioning, among others, the latter's acts of naming it as borrower of funds from investors.[39]

It bears stressing too that all the documents attached by Wincorp to its pleadings before the CA cannot be given any weight or evidentiary value for the sole reason that, as correctly observed by the CA, these documents were not formally offered as evidence in the trial court. To consider them now would deny the other parties the right to

examine and rebut them. Section 34, Rule 132 of the Rules of Court provides:

> Section 34. Offer of evidence —The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

"The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."[40]

The Court cannot, likewise, disturb the findings of the RTC and the CA as to the evidence presented by the Francias. It is elementary that objection to evidence must be made after evidence is formally offered.[41] It appears that Wincorp was given ample opportunity to file its Comment/Objection to the formal offer of evidence of the Francias but it chose not to file any.

All told, the CA committed no reversible error in rendering the assailed July 27, 2010 Decision and in issuing the challenged October 14, 2010 Resolution.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Peralta,[*] (Acting Chairperson), Abad, Sereno,[**] and Perlas-Bernabe, JJ., concur.

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[*] Designated as Acting Chairperson per Special Order No. 1166 dated November 28, 2011.

[**] Designated as additional member per Special Order No. 1167 dated November 28, 2011.

[1] Rollo, pp. 10-20. Penned by Associate Justice Florito S. Macalino, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Ramon S. Bato, Jr., concurring.

[2] Records, pp. 381-384.

[3] Rollo, p. 50.

[4] Records, pp. 1-13.

[5] Id. at 23-33; 34-39.

[6] Id. at 99-100.

[7] Id. at 106-115.

[8] Id. at 116-127.

[9] Id. at 144-151.

[10] Id. at 154-157.

[11] Id. at 167.

[12] Id. at 185-187.

[13] Id. at 236.

[14] Id. at 237.

[15] TSN, June 26, 2002, pp. 5-14.

[16] Records, pp. 16-17, 383; rollo, pp. 12-13.

[17] TSN, June 26, 2002, pp. 15-18.

[18] Records, pp. 18-19.

[19] Id. at 219-235.

[20] Id. at 274-276.

[21] Id. at 298.

[22] Id. at 325-326.

[23] Id. at 332-337.

[24] Id. at 371-373.

[25] Id. at 381-384.

[26] Id. at 550.

[27] Rollo, pp. 14-15.

[28] Id. at 16-20.

[29] Id. at 8-9.

[30] Id. at 33, 35.

[31] Microsoft Corporation v. Maxicorp, Inc., 481 Phil. 550, 561 (2004).

[32] Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

[33] Rollo, p. 33.

[34] Id. at 34.

[35] Article 1868 of the Civil Code.

[36] Eurotech Industrial Technologies, Inc. v. Cuizon, G.R. No. 167552, April 23, 2007, 521 SCRA 584, 592-593.

[37] Id. at 593.

[38] TSN, June 26, 2002, pp. 17-20.

[39] Rollo, pp. 212-213.

[40] Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc., G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145.

[41] Sec. 36. Objection. – Objection to evidence offered orally must be made immediately after the offer is made.

> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefore shall become reasonable apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

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In any case, the grounds for the objections must be specified. (Revised Rules on Evidence);

See also the case of Macasiray v. People, 353 Phil. 353 (1998).

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