

FILIPINAS MANUFACTURERS BANK, PLAINTIFF-APPELLEE, VS. EASTERN RIZAL FABRICATORS, DEFENDANT-APPELLANT.

G.R. No. 62741. May 29, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This appeal was certified by the Appellate Court to this Court, the question involved being purely legal. That question concerned the propriety of a judgment on the pleadings.

On March 2, 1979, Filipinas Manufacturers Bank [the surviving bank after a merger with the Filipinas Bank and Trust Co.] filed in the Court of First Instance of Rizal, Pasig branch, a complaint against Eastern Rizal Fabricators. It alleged inter alia that defendant Eastern Rizal Fabricators had executed on July 30, 1976, a promissory note for P370,000 evidencing a money market loan, with interest thereon at the rate of 14% plus 2% handling fee per annum until paid; that among the terms and conditions of said promissory note was that the interest not paid when due would be added to and become part of the principal, the same to be computed monthly and would bear the same rate of interest as the principal and an additional sum equivalent to 10% of the amount due as and for attorney's fees; that the note matured on August 30, 1976; and that despite repeated demands, defendant refused to pay without any valid and legal grounds.[1]

In its answer, defendant admitted its indebtedness but interposed the special and affirmative defense that the action by plaintiff bank was premature because the latter had agreed to forbear collection of the note at least "until arrival of the aforesaid date [not later than 180 banking days from December 2, 1978] when defendant will be receiving payment which will be applied to the satisfaction of defendant's indebtedness to plaintiff".[2] Defendant expected to recover about P300,000.00 from Jose Lecaros Abel, its supplier of scrap metals.

Thereupon, plaintiff filed a motion for judgment on the pleadings on the grounds that defendant's answer admitted the material allegations of the complaint and that it failed to tender an issue. Amplifying on its motion, plaintiff maintained that the affirmative defense that plaintiff, through its president, had agreed to postpone the enforcement of the note is untenable. It is contrary to the parol evidence rule which provides that when the terms of an agreement had been reduced to writing, it is to be considered as containing all such terms and therefore there can be, as between the parties and their successors-in-interest, no evidence of the terms of the agreement other than the contents of the writing itself.[3]

Plaintiff also noted that it is "un-thinkable" for the bank to have agreed to defer collection of the obligation until after 180 banking days from December 2, 1978 which is "two years and four months after the promissory note has matured".

Plaintiff stressed that it is not privy to any alleged compromise agreement between defendant and its supplier. Its main concern is the settlement of defendant's money market loan which is long overdue.

On July 23, 1979, despite defendant's opposition, the trial court issued the challenged order granting plaintiff's

motion for judgment on the pleadings. It ordered defendant Eastern Rizal Fabricators to pay to plaintiff Filipinas Manufacturers Bank the sum of P370,000.00 plus interest at 14% per annum and 2% as handling damages with additional 10% of the principal obligation as attorney's fees and to pay the costs of the suit.[4]

As earlier stated, defendant Eastern Rizal Fabricators appealed the judgment to the Appellate Court which in turn certified the case to this Court on a pure question of law.[5]

In its brief, defendant-appellant Eastern Rizal Fabricators argues that the lower court erred in rendering a judgment on the pleadings because the question of whether or not appellee bank had agreed to forbear collection on the note was an issue which required a hearing.

Appellant avers that it had borrowed P370,000.00 from plaintiff-appellee bank to make an advance payment for scrap metals purchased from Jose Lecaros Abel. Abel failed to deliver the entire merchandise. Appellant sued Abel for the return of the advance payment. They subsequently entered into a compromise agreement which the court approved. In that agreement, Abel promised to pay appellant the amount due not later than 180 banking days from December 2, 1978. Appellee bank had been made aware of that compromise and in fact it agreed to forbear collection of the promissory note until such time when appellant would receive payment which would turn be applied to the satisfaction of appellant's indebtedness to appellee bank.[6]

On its part, appellee bank belies the existence of any agreement to defer enforcement of the loan transaction and argues that even assuming there was such an agreement, it did not constitute a genuine defense sufficient to de-feat the complaint.

The lower court, in rendering judgment on the pleadings, upheld appellee's contention that it would be a mistake to receive evidence as to the alleged verbal understanding because it would be permitting parol evidence to alter or vary a written contract. It will be borne in mind that appellant's claimed understanding with the appellee was purportedly entered into after the appellant had encountered financial difficulties in paying the loan.

The lower court is in error. The parol evidence rule which prohibits the admission of oral evidence to vary or contradict a written contract does not apply to or prohibit a subsequent modification by parol evidence.[7] In other words, subsequent agreements to written contracts may be made orally and evidence in reference thereto does not violate the parol evidence rule.[8]

Wigmore illustrates: Where a document, for example, is executed on July 1, it may be held to embody the final and exclusive result of negotiations before and up to the time of execution; but a transaction on August 1 must be a separate one and therefore can never be excluded, so far as the effect of the document of July 1 is concerned. It may be that some rule or form may make that transaction of August 1 invalid but the present rule can interpose no obstacle.[9]

The reason for the rule is fundamental. The parties cannot be presumed to have intended the written instrument to cover all their possible subsequent agreements. Moreover, parol evidence does not in any way deny that the original agreement was that which the writing purports to express, but merely shows that the parties have exercised their right to change or abrogate their original understanding or to make a new and independent one. It makes no difference how soon after the execution of the written contract the parol one was made. If it was in fact subsequent and is otherwise unobjectionable, it may be proved and enforced.[10]

The inescapable conclusion therefore is that the judgment on the pleadings was improper. Appellant's defense of forbearance indubitably raised a material issue which could not be simply brushed aside without the presentation of evidence. Reversal of the judgment and remand of the case to the court of origin for hearing on the merits should follow as a matter of course.

Considering however that this case has re-mained pending for almost a decade now, so that even the claimed forbearance has long lapsed, there was marked reluctance among the members of the Court to remand the case to the court below. A consensus was therefore reached to seek a more expeditious manner to resolve the case. The parties were required to inform the Court whether or not the loan of P370,000.00, which is the subject matter of the present dispute, was still outstanding and if no full payment has been made, to submit memoranda substantiating their respective allegations concerning the defense of forbearance. The appellant complied and submitted its memorandum, stating in part that it still had "an out-standing balance of P230,000.00 on its aforesaid account" with the appellee bank. It reiterated its prayer that the judgment complained of be re-versed. The appellee bank did not file its memorandum despite notices sent to its counsel of record.

Appellee bank's unexplained inaction has left us with no other recourse but to order the appellant to discharge its debt to the admitted amount of P230,000.00. Remanding the case to the court of origin merely to ascertain whether there was in fact a prior agreement to defer payment on the promissory note will serve no useful purpose and will only delay the termination of this case. By its silence we can assume that the appellee bank has no objections to the amount owing, as acknowledged by the appellant.

WHEREFORE, the assailed judgment is hereby set aside for being inappropriate. Appellant Eastern Rizal Fabricators is ordered to pay appellee Filipinas Manufacturers Bank the sum of P230,000.00 plus interest at 14% per annum computed from July 30, 1976, 2% of the principal obligation as handling damages and 10% of the total amount due as attorney's fees in full settlement of the loan in question.

This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

[1] pp. 3 and 25, Record on Appeal.

[2] p. 6, Record on Appeal.

[3] Rule 130, Section 7, Rules of Court.

[4] p. 19, Record on Appeal.

[5] p. 20, Record.

[6] pp. 5-6, Appellant's Brief.

[7] *Elliott-Lewis Corp. v. York-ShIPLEY, Inc.*, 372 P. 346, 94 Atl. 2d 47; *Marx v. King*, 162 Mich, 258, 127 N.W. 341; *Canuto v. Mariano*, 37 Phil. 840.

[8] *Morrison v. Kaufman*, 156 P2d 473; *Burlesque Artists Assoc. v. I. Hirst Enterprises, Inc.*, 267 F2d 414.

[9] *Wigmore* at p. 131

[10] *Canuto v. Mariano*; *supra*, at p. 843

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