

KALILID WOOD INDUSTRIES CORPORATION, ALFREDO SALONGA AND JOAQUIN MIGUEL DE JESUS, PETITIONERS, VS. HONORABLE INTERMEDIATE APPELLATE COURT AND PHILIPPINE BANKING CORPORATION, RES...

G.R. No. 75502. November 12, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 17 November 1976, Joaquin Miguel de Jesus and Alfredo T. Salonga, President-General Manager and Comptroller, respectively, of P.B. De Jesus and Company, Inc., executed a promissory note (PBC No. 1202-76) in favor of respondent Philippine Banking Corporation in the amount of P600,000.00, the obligation maturing on 29 December 1976. Similarly, on 2 December 1976, a second promissory note (PBC No. 1255-76) was executed this time in the amount of P300,000.00, payable on or before 3 January 1977. These two instruments were executed to document or reflect loans secured from respondent Bank and were signed by Messrs. de Jesus and Salonga in the following manner:

A. Promissory Note PBC No. 1202-76 -- for P600,000.00:

"Due December 29, 1976 No. 1202-76

For value received, I/we jointly and severally promise to pay to the Philippine Banking Corporation at its office at Ayala Avenue, Makati, Metro Manila the sum of SIX HUNDRED THOUSAND ONLY *** pesos (P600,000.00), with interest at the rate of FOURTEEN per cent (14%) per annum, from TODAY until paid. In case this note is not paid at maturity the interest rate shall automatically be increased to (%) per annum.

x x x x x x x x

Executed at Makati, Philippines on November 17, 1976.

P.B. DE JESUS & CO., INC.

(Sgd.) Alfredo Salonga (Sgd.) Miguel de Jesus

IN OUR PERSONAL CAPACITY

(Sgd.) Alfredo Salonga (Sgd.) Miguel de Jesus"

B. Promissory Note PBC No. 1255-76 -- for P300,000.00:

"Due January 3, 1977 No. 1255-76

For value received, I/we jointly and severally promise to pay to the Philippine Banking Corporation at its office at Ayala Avenue, Makati, Metro Manila the sum of THREE HUNDRED THOUSAND ONLY *** pesos (P300,000.00), with interest at the rate of FOURTEEN per cent (14%) per annum, from TODAY until paid. In case this note is not paid at maturity the interest rate shall automatically be increased to (%) per

annum.

X X X X X X X X

Executed at Makati, Philippines on December 2, 1976.

P.B. DE JESUS & CO., INC.

(Sgd.) Alfredo Salonga (Sgd.) Miguel de Jesus

IN OUR PERSONAL CAPACITIES

(Sgd.) Alfredo Salonga (Sgd.) Miguel de Jesus"

On 5 March 1978, P.B. De Jesus and Company, Inc., by vote of its stockholders, changed its corporate name to Kalilid Wood Industries Corporation (hereafter "Kalilid"), an act subsequently validated by the Securities and Exchange Commission. Thereafter, respondent Bank served several letters of demand upon petitioner Kalilid for payment by the latter of the obligations contracted under promissory notes PBC No. 1202-76 and PBC No. 1255-76 which had apparently remained unsettled. Petitioner Kalilid, however, disowned its alleged indebtedness under both promissory notes.

On 15 May 1981, respondent Bank filed a Complaint for collection (docketed as Civil Case No. 41268) against petitioner Kalilid and Messrs. de Jesus and Salonga with Branch 23 of the then Court of First Instance of Rizal (Seventh Judicial District).[1] In its complaint, respondent Bank alleged that petitioner Kalilid, as principal, should be held solidarily liable under promissory notes PBC No. 1202-76 and PBC No. 1255-76 together with Messrs. de Jesus and Salonga, both of whom had signed said promissory notes for and in behalf of the petitioner Company, as well as in their own personal capacities. Respondent Bank further alleged that, as of 30 April 1981, the total amount of the indebtedness of the obligors under the two promissory notes had risen to P1,780,253.08 – i.e., P1,186,496.96 with respect to promissory note PBC No. 1202-76, and P593,756.12 with respect to promissory note PBC No. 1255-76. The Bank submitted in substantiation of these claimed amounts two separate Statements of Account (one for each promissory note), which had been prepared by respondent Bank and attached to the complaint as Annexes "C" and "D" thereof.[2] Promissory notes PBC No. 1202-76 and PBC No. 1255-76 were likewise attached to the complaint as its Annexes "A" and "B", respectively.[3]

In its Answer dated 10 July 1981,[4] petitioner Kalilid alleged that it "ha[d] no knowledge or information sufficient to form a belief as to the truth of [the material allegations in the complaint]".[5] As its affirmative defense, petitioner Kalilid asserted that the authority to borrow money or contract loans on its behalf had not been granted to Messrs. de Jesus and Salonga who, it was further asserted, should be held solely liable under the two promissory notes. The answer of petitioner Kalilid, however, was not verified.

The complaint was dismissed, though without prejudice, with respect to Messrs. de Jesus and Salonga whose whereabouts could not then be ascertained.

The parties were unable to arrive at an amicable settlement between themselves at the pre-trial stage of the litigation. Subsequently, a motion for summary judgment was filed by respondent Bank to which petitioner Kalilid raised neither objection nor opposition.

In a three-page Decision dated 12 October 1983, the trial court found petitioner Kalilid liable to respondent Bank for the obligations contracted under promissory notes PBC No. 1202-76 and PBC No. 1255-76. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff Philippine Banking Corporation and against

defendant Kalilid Wood Industries Corporation who is ordered to pay plaintiff:

1. The amount of P1,780,253.08 plus legal interest from April 9, 1981 until the amount is fully paid;
2. The amount equivalent to 10% of the total amount due as attorney's fees; and
3. The costs of suit.

SO ORDERED."

The trial Judge based his decision primarily on two factors: (1) the failure of petitioner Kalilid to verify its answer, which failure the trial Judge considered as amounting to an admission by petitioner Kalilid of the genuineness and due execution of promissory notes PBC No. 1202-76 and PBC No. 1255-76, which were annexed to respondent Bank's complaint; and (2) the fact that the two disputed promissory notes were signed by Messrs. de Jesus and Salonga both for and in behalf of the former P.B. De Jesus and Company, Inc. (now petitioner Kalilid) and in their own personal capacities.

The judgment of the lower court was affirmed in toto on appeal. In its disputed Decision dated 8 November 1985, the then Intermediate Appellate Court (Third Civil Cases Division) held:

"Defendant-appellant faults the lower court in holding it liable to pay the amount of P1,780,253.08 inasmuch as the promissory notes covered only P900,000.00 claiming that plaintiff-appellee failed to adduce evidence as to how said amounts increased to the amount of P1,780,253.08. Defendant-appellant argument is really flimsy, because it overlooked the fact that the promissory notes in question which were due and demandable since December 29, 1976 and January 3, 1977 bear interest at the rate of 14% and further stipulates for the payment of attorney's fees of 10% of the amount due including interest in case of collection of the promissory notes is done through a lawyer.

Moreover, the statements of account Annexes A and B are also attached to the same complaint as integral part thereof. Annex A pertains to the promissory note No. 1202-76 with the principal of P600,000.00 while Annex B pertains to the promissory note No. 1255-76 with the principal of P300,000.00. Explained in said statements of account are the charges for past due interest and penalty charges and the total of said obligation as of April 30, 1981 showed a total of principal, interest and penalty charges of P1,780,253.08. The genuineness and due execution of said promissory notes and statements of account are deemed admitted by the failure to deny under oath said documents. x x x"[6]

Petitioner Kalilid's Motion for Reconsideration was denied by the Third Civil Cases Division on 29 July 1986.

In the present Petition for Review, petitioner Kalilid no longer denies its liabilities and obligations under the two promissory notes executed in favor of respondent Bank. It would, however, contest the correctness of the aggregate amount of its indebtedness, as claimed by respondent Bank. In this respect, petitioner Kalilid contends that although it may have impliedly admitted the genuineness and due execution of promissory notes PBC No. 1202-76 and PBC No. 1255-76 -- Annexes "A" and "B" of the Complaint -- as a result of its failure to deny specifically and under oath the material allegations in respondent Bank's complaint, such admission cannot be made to extend and apply to the two aforementioned Statements of Account -- Annexes "C" and "D" of the Complaint -- since none of petitioner Kalilid's duly authorized representatives had participated in the preparation thereof. Furthermore, in the computations appearing therein, amounts corresponding to service charges, penalty charges, and interest charges on past due interest were included which, petitioner Kalilid claims, are not part of its undertakings under either promissory note.

We agree with the ruling of the trial Judge and the respondent appellate court that petitioner Kalilid, due to its failure to verify its answer, is deemed to have admitted by implication the authenticity and due execution of

promissory notes PBC No. 1202-76 and PBC No. 1255-76, which were both annexed to and made the basis for respondent Bank's complaint.[7] Consequently, defenses relating to the genuineness and due execution of the notes, such as that the instruments are spurious, counterfeit, or of different import on their faces from the ones executed by the parties; or that the signatures appearing therein are forgeries; or that said signatures were unauthorized, as in the case of an agent signing for his principal, or one signing in behalf of a partnership or corporation; or that the corporation was not authorized under its charter to sign the instruments; or that the party charged signed the instruments in some capacity other than that set out in the instruments; or that the instruments were never delivered, are effectively cut off,[8] placing petitioner Kalilid in estoppel from disclaiming liability under those promissory notes. No genuine issue having been raised in the trial court by petitioner Kalilid regarding the existence and validity of its liabilities under promissory notes PBC No. 1202-76 and PBC No. 1255-76, summary judgment was properly and appropriately rendered in the case at bar.[9]

In respect, however, of the amount of petitioner total Kalilid's indebtedness to respondent Bank under the two promissory notes, it was error for the appellate court (as for the trial Judge) to have expanded the scope of petitioner Kalilid's implied admission of genuineness and due execution so as to include the two Statements of Account annexed to the complaint. On this point, Rule 8, Section 8 of the Revised Rules of Court is quite specific:

"Section 8. How to contest genuineness of such documents. -- When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused." (Underscoring supplied.)

An examination of the two disputed Statements of Account reveals that both documents (1) were printed under the official letterhead of respondent Bank, (2) were prepared by the Loans and Discounting Department of respondent Bank, and (3) bore the signature of approval of respondent Bank's authorized officer. No other signature appears on the face of either document. In other words, both Statements of Account were prepared exclusively by respondent Bank. It follows that petitioner Kalilid, not having been privy thereto, did not admit the genuineness and due execution of the Statements in spite of its failure to verify its answer to the complaint, and that petitioner is not conclusively bound by the charges nor by the computations of amounts set out therein.[10]

The aggregate amount of petitioner Kalilid's monetary obligations to respondent Bank is determinable from the common stipulations and conditions contained in promissory notes PBC No. 1202-76 and PBC No. 1255-76, under which petitioner Kalilid bound itself to pay respondent Bank, aside from the principal loan totalling P900,000.00: (1) interest at the rate of fourteen percent (14%) per annum, payable monthly and compounded monthly if unpaid;[11] and (2) attorney's fees equivalent to ten percent (10%) of the entire amount due, including interest.[12] It does not, however, appear from the face of either promissory note that petitioner Kalilid agreed to pay service charges and penalty charges in case of late payment of its obligations to respondent Bank. Since an undertaking to pay service charges and penalty charges on top of interest and interest on past due interest cannot be presumed, it is necessary that evidence be adduced by both parties to prove or disprove their respective claims regarding the basis and propriety of including such charges and in such amounts as part of petitioner Kalilid's liabilities under the two promissory notes. Evidence relating to the computation of interest on past due interest, that is due and payable may also be submitted.

WHEREFORE, the decision of Branch 23 of the then Court of First Instance of Rizal (Seventh Judicial District) in Civil Case No. 41268 and the decision of the then Intermediate Appellate Court dated 8 November 1985 are **AFFIRMED** to the extent that they refer to the principal amounts and stipulated interest due under Promissory

Notes PBC No. 1202-76 and PBC No. 1255-76 and to attorney's fees equivalent to ten percent (10%) of the entire amount due. This case is REMANDED to the trial court for determination of whether or not service charges and penalty charges in case of late payment are due from petitioner Kalilid to respondent Bank, and if so, the amount thereof, as well as for determination of the amount of interest on past due interest, due and payable by petitioner Kalilid to respondent Bank. No pronouncement as to costs.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 29-31, Annex "E" of Petition.

[2] Id., pp. 27-28, Annexes "C" and "D" of Petition.

[3] Id., pp. 25-26, Annexes "A" and "B" of Petition.

[4] Id., pp. 32-34, Annex "F" of Petition.

[5] Answer, p. 2, par. 3.

[6] Id., p. 42, Annex "H" of Petition; underscoring supplied. The decision was written by Ejercito, J., with Coquia, Zosa and Castro-Bartolome, JJ., concurring.

[7] Rule 8, Section 8 of the Revised Rules of Court, *infra*. See in this connection *Capitol Motors Corporation vs. Yabut*, 32 SCRA 1 [1970]; *Iriola vs. Felices*, 30 SCRA 202 [1969]; and *Philippine Commercial and Industrial Bank vs. ELRO Development Corporation*, 29 SCRA 38 [1969].

[8] See *Bough and Bough vs. Cantiveros and Hanopol*, 40 Phil. 209 [1919]; *Ramirez vs. Orientalist Co. and Fernandez*, 38 Phil. 634 [1918]; and *Hibberd vs. Rohde and McMillian*, 32 Phil. 476 [1915].

[9] Rule 34, Section 3 of the Revised Rules of Court. See *Guevarra vs. Court of Appeals*, 124 SCRA 297 [1983]; and *Clemente vs. Pascua*, 25 SCRA 422 [1968].

[10] See *Cadirao vs. Estenzo*, 132 SCRA 93 [1984].

[11] Paragraph 2 of each promissory note provides:

"I/We hereby agree that the interest on this note shall be payable on a monthly basis commencing one (1) month from date hereof, and if said interest is not paid, the same shall form part of the principal and together with the principal shall earn interest at the rate stipulated." (Underscoring supplied.)

[12] Paragraph 5 of each promissory note provides:

"In case it is necessary to collect this note through an attorney-at-law, the makers shall jointly and severally pay ten per cent (10%) of the amount due (including interest) on this note as attorney's fees, exclusive of all costs, fees and damages allowed by law." (Underscoring supplied.)

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