

LUCIO R. CRUZ, PETITIONER, VS. COURT OF APPEALS AND CONRADO Q. SALONGA, RESPONDENTS.

G.R. No. 79962. December 10, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The private respondent Conrado Salonga filed a complaint for collection and damages against petitioner Lucio Cruz* in the Regional Trial Court of Lucena City alleging that in the course of their business transactions of buying and selling fish, the petitioner borrowed from him an amount of P35,000.00, evidenced by a receipt dated May 4, 1982, marked as Exhibit D, reading as follows:

5/4/82

Received the amount of Thirty Five Thousand Cash from Rodrigo Quiambao and Conrado Salonga on the day of May 4, 1982

Sgd. Lucio Cruz

The plaintiff claimed that of this amount, only P20,000.00 had been paid, leaving a balance of P15,000.00; that in August 1982, he and the defendant agreed that the latter would grant him an exclusive right to purchase the harvest of certain fishponds leased by Cruz in exchange for certain loan accommodations; that pursuant thereto, Salonga delivered to Cruz various loans totaling P15,250.00, evidenced by four receipts and an additional P4,000.00, the receipt of which had been lost; and that Cruz failed to comply with his part of the agreement by refusing to deliver the alleged harvest of the fishpond and the amount of his indebtedness.

Cruz denied having contracted any loan from Salonga. By way of special defense, he alleged that he was a lessee of several hectares of a fishpond owned by Nemesio Yabut and that sometime in May 1982, he entered into an agreement with Salonga whereby the latter would purchase (pakyaw) fish in certain areas of the fishpond from May 1982 to August 15, 1982. They also agreed that immediately thereafter, Salonga would sublease (bubuwan) the same fishpond for a period of one year. Cruz admitted having received on May 4, 1982, the amount of P35,000.00 and on several occasions from August 15, 1982, to September 30, 1982, an aggregate amount of P15,250.00. He contended however, that these amounts were received by him not as loans but as consideration for their "pakyaw" agreement and payment for the sublease of the fishpond. He added that it was the private respondent who owed him money since Salonga still had unpaid rentals for the 10-month period that he had actually occupied the fishpond. Cruz also claimed that Salonga owed him an additional P4,000.00 arising from another purchase of fish from other areas of his leased fishpond.

In a pre-trial conference held on August 24, 1984, petitioner and private respondent entered into the following partial stipulation of facts.

COURT:

Plaintiff and defendant, through their respective counsel, during the pre-trial conference, agreed on the

following stipulation of facts:

- 1) That plaintiff Conrado Salonga entered into a contract of what is commonly called as "pakyawan" with defendant Lucio Cruz on the fishes contained in a fishpond which defendant Lucio Cruz was taking care of as lessee from the owner Mr. Nemesio Yabut, with a verbal contract for the sum of P28,000.00 sometime in May 1982.
- 2) That because of the necessity, defendant Lucio Cruz at that time needed money, he requested plaintiff Conrado Salonga to advance the money of not only P28,000.00 but P35,000.00 in order that Lucio Cruz could meet his obligation with the owner of the fishpond in question, Mr. Nemesio Yabut;
- 3) That the amount of P35,000.00 as requested by defendant Lucio Cruz was in fact delivered by plaintiff Conrado Salonga duly received by the defendant Lucio Cruz, as evidenced by a receipt dated May 4, 1982, duly signed by defendant Lucio Cruz.
- 4) That pursuant to said contract of "pakyaw," plaintiff Conrado Salonga was able to harvest the fishes contained in the fishpond administered by Lucio Cruz in August 1982.
- 5) Immediately thereafter the aforesaid harvest thereon, they entered again on a verbal agreement whereby plaintiff Conrado Salonga and defendant Lucio Cruz had agreed that defendant Lucio Cruz will sublease and had in fact subleased the fishpond of Nemesio Yabut to the herein plaintiff for the amount of P28,000.00 for a period of one year beginning August 15, 1982.
- 6) That sometime on June 15, 1983, Mayor Nemesio Yabut, who is the owner of the fishpond, took back the subject matter of this case from the defendant Lucio Cruz.
- 7) That defendant Lucio Cruz in compliance with their verbal sublease agreement had received from the plaintiff Conrado Salonga the following sums of money:

- a) P8,000.00 on August 15, 1982 as evidenced by Annex "B" of the Complaint (Exh. E);
- b) the sum of P500.00 on September 4, 1982, as evidenced by Annex "C" of the complaint (Exh. F);
- c) The sum of P3,000.00 on September 19, 1982 as evidenced by Annex "D" of the complaint (Exh. G); and
- d) The sum of P3,750.00 on September 30, 1982 as Annex "E" of the complaint (Exh. H).

At the trial, the private respondent claimed that aside from the amounts of P35,000.00 (Exh. D), P8,000.00 (Exh. E), P500.00 (Exh. F), P3,000.00 (Exh. G) and P3,750.00 (Exh. H) mentioned in the partial stipulation of facts, he also delivered to the petitioner P28,000.00, which constituted the consideration for their "pakyaw" agreement. This was evidenced by a receipt dated May 14, 1982, marked as Exhibit I and reading as follows:

May 14, 1982

Tinatanggap ko ang halagang dalawampu't walong libong piso (P28,000.00) bilang halaga sa pakyaw nila sa akin sa sangla sa kahong bilang #8 maliit at sa kaputol na sapa sa gawing may bomba. Ito ay tatagal hanggang Agosto, 1982.

SGD. LUCIO CRUZ

Salonga also claimed that he had paid Cruz the amount of P4,000 but the receipt of which had been lost and denied being indebted to the petitioner for P4,000 for the lease of other portions of the fishpond.

For his part, the petitioner testified that he entered into a "pakyaw" and sublease agreement with the private respondent for a consideration of P28,000 for each transaction. Out of the P35,000 he received from the private

respondent on May 4, 1982, P28,000 covered full payment of their "pakyaw" agreement while the remaining P7,000 constituted the advance payment for their sublease agreement. The petitioner denied having received another amount of P28,000 from Salonga on May 14, 1982. He contended that the instrument dated May 14, 1982 (Exh. I) was executed to evidence their "pakyaw" agreement and to fix its duration. He was corroborated by Sonny Viray, who testified that it was he who prepared the May 4, 1982, receipt of P35,000.00, P28,000 of which was payment for the "pakyaw" and the excess of P7,000.00 as advance for the sublease.

The trial court ruled in favor of the petitioner and ordered the private respondent to pay the former the sum of P3,054.00 plus P1,000.00 as litigation expenses and attorney's fees, and the costs. Judge Eriberto U. Rosario, Jr. found that the transactions between the petitioner and the private respondent were indeed "pakyaw" and sublease agreements, each having a consideration of P28,000.00, for a total of P56,000.00. Pursuant to these agreements, Salonga paid Cruz P35,000.00 on May 4, 1982 (Exh. D); P8,000.00 on August 15, 1982 (Exh. E); P500.00 on September 4, 1982 (Exh. F); P3,000 on September 19, 1982; P3,750 on September 30, 1982 (Exh. H) and P4,000.00 on an unspecified date. The trial court noted an earlier admission of the private respondent that on an unspecified date he received the sum of P6,000.00 from the petitioner. This amount was credited to the petitioner and deducted from the total amount paid by the private respondent. As the one-year contract of sublease was pre-terminated two months short of the stipulated period, the rentals were correspondingly reduced.

On appeal, the decision of the trial court was reversed. The respondent court instead ordered the petitioner to pay the private respondent the sum of P24,916.00 plus P1,500.00 as litigation expenses and attorney's fees, on the following justification:

Exhibit "I" is very clear in its non-reference to the transaction behind Exhibit "D." What only gives the semblance that Exhibit "I" is an explanation of the transaction behind Exhibit "D" are the oral testimonies given by the defendant and his two witnesses. On the other hand, Exhibit "I" is very clear in its language. Thus, its tenor must not be clouded by any parol evidence introduced by the defendant. And with the tenor of Exhibit "I" remaining unembellished, the conclusion that Exhibit "D" is a mere tentative receipt becomes untenable.

The trial court erred when it relied on the self-serving testimonies of the defendant and his witness as against the receipts both parties presented and adopted as their own exhibits. As said before, Exhibit "I" is very clear in its tenor. And if it is really the intention of Exhibit "I" to explain the contents of Exhibits "D", such manifestation or intention is not found in the four corners of the former document.

The respondent court also found that the amounts of P35,000.00, P8,000.00, P500.00, P3,000.00, P3,750.00 and P4,000.00 were not payments for the "pakyaw" and sublease agreement but for loans extended by Salonga to Cruz. It also accepted Salonga's claim that the amount of P28,000.00 was delivered to the petitioner on May 14, 1982, as payment on the "pakyaw" agreement apart from the P35,000.00 (Exh. D) that was paid on May 4, 1982. However, it agreed that the amount of P6,000.00 received by the private respondent from the petitioner should be credited in favor of the latter.

The petitioner is now before this Court, raising the following issues:

1. The private respondent Court of Appeals gravely erred in (1) disregarding parol evidence to Exhibits "D" and "I" despite the fact that these documents fall under the exceptions provided for in Sec. 7, Rule 130 of the Rules of Court and thereby in (2) making a sweeping conclusion that the transaction effected between the private respondent and petitioner is one of contract of loan and not a contract of lease.
2. Assuming for the sake of argument that exhibits "D" and "I" evidence separate transactions, the latter document should be disregarded, the same not having been pleaded as a cause of action.
3. Whether or not the Stipulation of Facts entered into by the parties herein relative to their executed

transactions during the hearing of their case a quo, are binding upon them and as well as, upon the public respondent?

Our ruling follows.

Rule 130, Sec. 7, of the Revised Rules of Court provides:[1]

Sec. 7 Evidence of Written Agreements. - When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

- a) When a mistake or imperfection of the writing or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;
- b) When there is an intrinsic ambiguity in the writing.

The term "agreement" includes wills.

The reason for the rule is the presumption that when the parties have reduced their agreement to writing, they have made such writing the only repository and memorial of the truth, and whatever is not found in the writing must be understood to have been waived or abandoned.[2]

The rule, however, is not applicable in the case at bar. Section 7, Rule 130 is predicated on the existence of a document embodying the terms of an agreement, but Exhibit D does not contain such an agreement. It is only a receipt attesting to the fact that on May 4, 1982, the petitioner received from the private respondent the amount of P35,000. It is not and could have not been intended by the parties to be the sole memorial of their agreement. As a matter of fact, Exhibit D does not even mention the transaction that gave rise to its issuance. At most, Exhibit D can only be considered a casual memorandum of a transaction between the parties and an acknowledgment of the receipt of money executed by the petitioner for the private respondent's satisfaction. A writing of this nature, as Wigmore observed is not covered by the parol evidence rule.

A receipt - i.e. a written acknowledgment, handed by one party to the other, of the manual custody of money or other personality - will in general fall without the line of the rule; i.e. it is not intended to be an exclusive memorial, and the facts may be shown irrespective of the terms of the receipt. This is because usually a receipt is merely a written admission of a transaction independently existing, and, like other admissions, is not conclusive.[3]

The "pakyaw" was mentioned only in Exhibit I, which also declared the petitioner's receipt of the amount of P28,000.00 as consideration for the agreement. The petitioner and his witnesses testified to show when and under what circumstances the amount of P28,000.00 was received. Their testimonies do not in any way vary or contradict the terms of Exhibit I. While Exhibit I is dated May 14, 1982, it does not make any categorical declaration that the amount of P28,000.00 stated therein was received by the petitioner on that same date. That date may not therefore be considered conclusive as to when the amount of P28,000.00 was actually received.

A deed is not conclusive evidence of everything it may contain. For instance, it is not the only evidence of the date of its execution, nor its omission of a consideration conclusive evidence that none passed, nor is its acknowledgment of a particular consideration an objection to other proof of other and consistent considerations; and, by analogy, the acknowledgement in a deed is not conclusive of the fact.[4]

A distinction should be made between a statement of fact expressed in the instrument and the terms of the contractual act. The former may be varied by parol evidence but not the latter.[5] Section 7 of Rule 130 clearly refers to the terms of an agreement and provides that "there can be, between the parties and their successors in

interest, no evidence of the terms of the agreement other than the contents of the writing."

The statement in Exhibit I of the petitioner's receipt of the P28,000.00 is just a statement of fact. It is a mere acknowledgment of the distinct act of payment made by the private respondent. Its reference to the amount of P28,000.00 as consideration of the "pakyaw" contract does not make it part of the terms of their agreement. Parol evidence may therefore be introduced to explain Exhibit I, particularly with respect to the petitioner's receipt of the amount of P28,000.00 and of the date when the said amount was received.

Even if it were assumed that Exhibits D and I are covered by the parol evidence rule, its application by the Court of Appeals was improper. The record shows that no objection was made by the private respondent when the petitioner introduced evidence to explain the circumstances behind the execution and issuance of the said instruments. The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent.[6] In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer.[7]

For failure of the private respondent to object to the evidence introduced by the petitioner, he is deemed to have waived the benefit of the parol evidence rule. Thus, in *Abrenica v. Gonda*,[8] this Court held:

x x x it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of proof, the inadmissibility of evidence is, or may be inferred.

It is also settled that the court cannot disregard evidence which would ordinarily be incompetent under the rules but has been rendered admissible by the failure of a party to object thereto. Thus:

x x x The acceptance of an incompetent witness to testify in a civil suit, as well as the allowance of improper questions that may be put to him while on the stand is a matter resting in the discretion of the litigant. He may assert his right by timely objection or he may waive it, expressly or by silence. In any case the option rests with him. Once admitted, the testimony is in the case for what it is worth and the judge has no power to disregard it for the sole reason that it could have been excluded, if it had been objected to, nor to strike it out on its own motion. (Emphasis supplied.)[9]

We find that it was error for the Court of Appeals to disregard the parol evidence introduced by the petitioner and to conclude that the amount of P35,000.00 received on May 4, 1982 by the petitioner was in the nature of a loan accommodation. The Court of Appeals should have considered the partial stipulation of facts and the testimonies of the witnesses which sought to explain the circumstances surrounding the execution of Exhibits D and I and their relation to one another.

We are satisfied that the amount of P35,000.00 was received by the petitioner as full payment of their "pakyaw" agreement for P28,000.00 and the remaining P7,000.00 as advance rentals for their sublease agreement. The claim that the excess of P7,000.00 was advance payment of the sublease agreement is bolstered by the testimony of the private respondent himself when during the cross examination he testified that:

ATTY. CRUZ:

Q: And during the time you were leasing the fishpond, is it not a fact that you pay lease rental to the defendant?

SALONGA:

A: No sir, because I have already advanced him money.

Q: What advance money are you referring to?

A: Thirty-Five Thousand Pesos (P35,000.00), sir.[10]

It was also error to treat the amounts received by the petitioner from August 15, 1982, to September 30, 1982, from the private respondent as loan accommodations when the partial stipulation of facts clearly stated that these were payments for the sublease agreement. The pertinent portions read:

7). That defendant Lucio Cruz in compliance with their verbal sublease agreement had received from the plaintiff Conrado Salonga the following sums of money: (Emphasis Supplied.)

- (a) P8,000.00 on August 15, 1982, as evidenced by Annex "B" the complaint;
- (b) the sum of P500.00 on September 4, 1982, as evidenced by Annex "C" of the complaint;
- (c) the sum of P3,000.00 on September 19, 1982, as evidenced by Annex "D" of the complaint;
- (d) the sum of P3,750.00 on September 30, 1982, as Annex "E" of the complaint;[11]

These admissions bind not only the parties but also the court, unless modified upon request before the trial to prevent manifest injustice.

We find, however, that the Court of Appeals did not act in excess of its jurisdiction when it appreciated Exhibit I despite the fact that it was not pleaded as a cause of action and was objected to by the petitioner. According to Rule 10 of the Rules of Court:

Sec. 5. Amendment to conform to or authorize presentation of evidence. – When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

In *Co Tiamco v. Diaz*,[12] the Supreme Court held:

x x x When evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, when the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him continuance to enable him to meet the situation created by the evidence. x x x

While it is true that the private respondent did not even file a motion to amend his complaint in order that it could conform to the evidence presented, this did not prevent the court from rendering a valid judgment on the issues proved. As we held in the *Co Tiamco* case:

x x x where the failure to order an amendment does not appear to have caused a surprise or prejudice to the objecting party, it may be allowed as a harmless error. Well-known is the rule that departures from procedure may be forgiven when they do not appear to have impaired the substantial rights of the parties.

The following computation indicates the accountability of the private respondent to the petitioner:

Exh. D, May 4, 1982 - P35,000.00

Exh. E, Aug. 15, 1982 - 8,000.00

Exh. F, Sept. 4, 1982 - 500.00

Exh. G, Sept. 19, 1982 - 3,000.00

Exh. H, Sept. 30, 1982 - 3,750.00

Lost receipt - 4,000.00

P54,250.00

Less: (amount received by
the private respondent
from the petitioner) (6,000.00)

Total amount paid by
the private respondent
to the petitioner P48,250.00

Amount to be paid by the private respondent to the petitioner:

1. Pakyaw P28,000.00

2. Sublease -28,000 per annum

Less: 2 months: 4,666 23,334.00

Total amount to be paid by the
private respondent to the
petitioner P51,334.00

Total amount to be paid by the P51,334.00
private respondent

Total amount paid by the
private respondent 48,250.00

Deficiency in the amount
paid by the private respondent P 3,084.00

ACCORDINGLY, the decision of the respondent Court of Appeals is REVERSED and that of the Regional Trial

Court of Laguna AFFIRMED, with the modification that the private respondent shall pay the petitioner the sum of P3,084.00 instead of P3,054.00, plus costs. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

* The ponente is not related to the petitioner or his counsel.

[1] Now Sec. 9, Rule 130, Revised Rules on Evidence, Effective July 1, 1989.

3. PAROL EVIDENCE RULE

Sec. 9. Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure Of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors interest after the execution of the written agreement.

The term "agreement" includes wills. (7a)

[2] Van Sychkel v. Dalrymple, 32 N.J. Eq., 233 cited in Vol. 5, F. Moran, Comments on the Rules of Court 104 (1970 ed.)

[3] IX J. Wigmore, Wigmore on Evidence, Sec. 2432 (1940).

[4] Baum v. Lynn, 72 Miss. 932, 18 So. 428, cited in IX Wigmore Sec. 2433.

[5] Ibid.

[6] Section 36, Rule 132, Revised Rules of Court. Now Sec. 36 Rule 132, as amended provides:

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 therefor shall become reasonably 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.

In any case, the grounds for the objections must be specified.

[7] II F. Regalado, Remedial Law Compendium, 435 (5th ed., 1988).

[8] 34 Phil. 739.

[9] Marella v. Reyes, 12 Phil. 1.

[10] TSN, September 28, 1984, pp. 26-27.

[11] TSN, August 24, 1984, pp. 14-15.

[12] 75 Phil. 672.

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