

INVESTMENT AND UNDERWRITING CORPORATION OF THE PHILIPPINES, PETITIONERS, VS. COMPTRONICS PHILIPPINES, INC. AND GENE V. TAMESIS, RESPONDENTS.

G.R. No. 81039, December 26, 1990

Ponente: PARAS, J.

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PARAS, J.:

This case, filed with the Court of Appeals but certified to this Court for disposition since it involves purely questions of law, is an appeal from the decision of the then Court of First Instance of Rizal,* Branch XI, dated May 31, 1983, in Civil Case No. 28210, dismissing the complaint of herein appellant.

The facts of the case are as follows:

Investment and Underwriting Corp. (IUCP, for short) filed a complaint against Comptronics Phils. (Comptronics, for short) for collection of a sum of money allegedly incurred by the latter under the following circumstances:

"4. On November 4 and 5, 1976, defendant Corporation (Comptronics) obtained a loan from the plaintiff (IUCP) and executed a promissory note No. MBV 1898A in favor of the plaintiff obligating itself to pay the latter the sum of Two Million One Hundred Four Thousand and Six Hundred and Fifty Pesos and Fifty-One Centavos (P2,104,650.51). A photocopy of the promissory note is hereto attached as Annex 'B'.

"5. Under the Promissory Note No. MBV 1898A (Annex 'B'), defendant Corp. bound itself to pay P2,104,650.51 on or before January 28, 1977 with interest at the rate of 14% per annum to accrue immediately in case of default in payment of the note.

"6. On October 29, 1976, plaintiff and defendant's Corp. entered into a 'Guaranty Agreement' which states, among others, as follows:

"Upon application of Comptronics, IUCP had arranged with financial institution(s) for the grant to Comptronics of credit line(s) in the amount of TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000) to finance the export requirements of Comptronics under the said line(s) were guaranteed and shall continue to be guaranteed by IUCP."

"A photocopy of the 'Guaranty Agreement' is hereto attached as Annex 'C'.

"7. By virtue of the abovementioned agreement, the Chartered Bank of Manila advanced on September 16, 1977 the amount of P271,801.57 to the defendant Corporation under an availment secured and guaranteed by plaintiff herein. The loan has already matured and is now past due making the plaintiff liable therefor.

"8. On November 8, 1977, plaintiff made payment to the Chartered Bank of Manila for P140,000.00 on another availment made by the defendant herein, which is likewise guaranteed by the plaintiff. Accordingly, the current account of plaintiff with the said Bank was debited with the said amount. A photocopy of the debit memo is hereto attached as Annex 'D'.

“9. In consideration of the loan obtained or to be obtained by defendant Comptronics Philippines, Inc. from herein plaintiff, defendant Gene V. Tamesis executed on October 22, 1976 a ‘Continuing Guaranty’ obligating himself, among others, as follows:

"For and in consideration of the sum or sums obtained and/or to be obtained by Comptronics Phil. Inc., hereinafter referred to as the DEBTOR/S from you and/or your principal/s, as may be evidenced by promissory note/s, checks, bills receivable/s and/or other evidence/s of indebtedness (hereinafter referred to as the NOTE/S. I/We hereby jointly and severally and unconditionally guarantee unto you and/or your principal/s, successor/s and assigns the prompt and punctual payment at maturity of the NOTE/s issued by the debtor/s in your and/or your principal/s, successor/s and assigns favor to the extent of the aggregate principal sum of Two Million Five Hundred Pesos (P2,500,000.00) Philippine currency, and such interests, charges and penalties as may hereinafter specified.

x x x x x x x x

"This guaranty shall be binding upon Me/Us. My/Our heirs, executors, administrators, successors, and assigns and shall insure to the benefit of you and be enforceable by you, your principal/s successor, transferees and assigns. If this guaranty is executed by two or more parties, they shall be jointly and severally liable hereunder x x x.

"In case of default as herein before specified, I/We agree to pay all sums unpaid by the debtor/s (principal and accrued interest/charges) plus interest thereon at the rate of Seventeen Percent (17%) p/a from the date immediately following due date thereof and liquidated damages in an amount equivalent to Seventeen Percent (17%) p/a based on the total obligation unpaid. If collection is effected by a lawyer or if payment is collected by a suit or through other proceedings, I/We furthermore agree to pay you and/or your principal/s attorney's fees equivalent to Twenty Percent (20%) of the unpaid obligation and costs of collection. x x x."

"A copy of the said ‘Continuing Guaranty’ is hereto attached as Annex 'E' and made an integral part of the complaint." (Rollo, pp. 76-A-80).

The aforesaid complaint prayed for the following:

"x x x that after hearing, judgment be rendered in favor of plaintiff and against the defendant ordering the latter to jointly and severally pay the plaintiff the following:

“1. P2,104,652.51 with interest of 14% from and after January 28, 1977, until full satisfaction has been made, with further interest at the rate of 6% on the accumulated interest from the filing of the complaint.

“2. The sum of P411,801.57 with interest at 14% from November 8, 1977, until full satisfaction has been made, with further interest at the rate of 6% on the accumulated interest from the date of the filing of the complaint.

“3. The sum equivalent to 17% of the value of the promissory note as liquidated damages.

“4. The sum equivalent to 20% per centum of the availments as liquidated damages.

“5. The sum equivalent to 20% of the amount due and unpaid as and for attorney's fees.

“6. The costs of the suit (Ibid., p. 76).

On March 20, 1978, Comptronics filed its answer denying the material allegations in IUCP's complaint concerning the promissory note No. MBV 1898A for the reason that the party-signatory thereto has been disauthorized to sign for and in behalf of Comptronics; admitting the material allegations on Comptronics' account with the Chartered Bank of Manila but that the remaining balance is now purely nominal; denying the

liability of Gene Tamesis for lack of consideration and due to the fact that IUCP itself has been the controlling/comptroller of Comptronics at the time; denying IUCP's claim for stipulated damages, attorney's fees and costs of suit allegedly due; the allegations that Comptronics failed to pay the amount due on the aforesaid promissory note, the alleged demand for payment thereof and the failure and refusal to pay (Ibid., p. 44; Appellees' Brief, pp. 5-6).

Thus, while Comptronics denied the genuineness and due execution of the documents, such denials were not under oath, hence under Section 8, Rule 8 of the Rules of Court, Comptronics is deemed to impliedly admitted the same.

On April 20, 1978, however, Comptronics received a request for admission from IUCP of the genuineness and due execution of the document in which the former objected to such request on April 22, 1987 (Appellees' Brief, p. 7).

On February 8, 1980, IUCP filed a motion praying that summary judgment be rendered (Rollo, p. 82). On February 28, 1980, the court a quo denied said motion since 'factual issues are involved considering defendant's (Comptronics) allegation in the answer that there had been regular liquidation of their account and that the remaining balance of their indebtedness x x x is now purely nominal' (Appellees' Brief, p. 9).

On October 30, 1980, IUCP manifested that it was resting its case by reason of the failure of Comptronics to deny under oath the genuineness and due execution of the actionable documents attached to the complaint, the same are deemed admitted and a prima facie case is made in their favor and entitles them to the judgment prayed for, unless Comptronics, should prove payment (Appellant's Brief, p. 6).

On November 4, 1980, Comptronics filed a demurrer to evidence, reiterating their previous motion to dismiss which the court a quo denied for lack of merit (Rollo, p. 83).

On July 16, 1981, the date set for the reception of their evidence, Comptronics failed to appear. Hence, the court a quo considered them to have waived their right to adduce evidence (Ibid.).

Upon motion for reconsideration filed by Comptronics, the court a quo reconsidered its order on September 9, 1981 and set the case anew for the reception of Comptronics' evidence (Ibid.).

On July 6, 1982, Comptronics rested its case without presenting any evidence (Ibid.).

On May 31, 1983, the court a quo rendered judgment dismissing IUCP's complaint, the dispositive portion of which reads:

"WHEREFORE, the above entitled case is dismissed without pronouncement as to costs.

SO ORDERED." (Appellees' Brief, p. 26).

From said decision, IUCP appealed the case to the Court of Appeals, docketed therein as CA G.R. CV No. 01685.

After the parties had submitted their respective briefs, IUCP on July 20, 1984 (Rollo, p. 15) and Comptronics on June 1, 1985 (Ibid., p. 44), the case was submitted for decision (Ibid., p. 45); and in a resolution the Court of Appeals** ordered its Clerk of Court to forward to this Court the whole record of the case for final determination (Ibid, p. 88).

The following issues of law were raised to this Court:

I

WHETHER OR NOT THE ACT OF REQUESTING FOR ADMISSION OF FACTS ALREADY DEEMED ADMITTED BY FAILURE TO DENY THE SAME UNDER OATH CONSTITUTES A WAIVER OF THAT IMPLIED ADMISSION;

II

WHETHER OR NOT IN AN ACTION FOR A SUM OF MONEY BASED ON A PROMISSORY NOTE ATTACHED TO THE COMPLAINT, IT IS STILL NECESSARY FOR PLAINTIFF-APPELLANT TO PROVE NON-PAYMENT BY THE DEFENDANT-APPELLEES EVEN IF THE LATTER HAD FAILED TO DENY UNDER OATH THE GENUINENESS AND DUE EXECUTION OF THE PROMISSORY NOTE.

As to the first issue, the answer is in the negative.

While the act of IUCP in requesting for admission the genuineness and due execution of the documents after having obtained from Comptronics an implied admission thereof may at best be considered as improper (see Francisco, Civil Procedure, Vol. II, p. 235, 1966 ed.), the same cannot be considered as having waived such implied admission.

As this Court ruled in the case of Sardane vs. Court of Appeals (167 SCRA 524, 533 [1988]), stating thus:

"Petitioners' invocation of the doctrine in Yu Chuck, et al. vs. Kong Li Po, which was reiterated in Central Surety and Insu. Co. v. Hodges, et al. does not sustain his thesis that the herein private respondents had 'waived the mantle of protection given him by Rule 8, Section 8.' It is true that such implied admission maybe waived by a party but only if he acts in a manner indicative of either an express or tacit waiver thereof. Petitioner, however, either overlooked or ignored the fact that, as held in Yu Chuck, and the same is true in other cases of identical factual settings, such a finding of waiver is proper where a case has been tried in complete disregard of the rule and the plaintiff having pleaded a document by copy, presents oral evidence to prove the due execution of the document and no objections are made to the defendants' evidence in refutation. This situation does not obtain in the present case hence said doctrine is obviously inapplicable." (Underlining supplied).

In the case of Yu Chuck (supra), the plaintiff was considered to have waived the implied admission when he presented, at the beginning of the trial, a number of witnesses and made no objections to the defendant's evidence in refutation; and in the case of Central Surety (supra). Hodges did not object to the evidence introduced by petitioner in order to prove that one of its agent (petitioner) had no authority to issue a surety bond, even after petitioner failed to deny under oath the genuineness and due execution of the bond. Hence, this Court considered the rule (Rule 8, Section 8, Rules of Court) in above cases, to have been waived. In the instant case, IUCP did neither of these. Hence, IUCP's request for admission cannot be taken as indicative of either an express or tacit waiver thereof. It can, at best, be considered as a mere 'superfluity', to borrow the words of the lower court viewed in another angle, but should not be considered as a waiver of the implied admission.

II

Anent the second issue, IUCP asserts that Comptronics, having admitted the genuineness and due execution of the documents, there was no need for them to present evidence nor prove non--payment by Comptronics inasmuch as the facts alleged in the complaint constituted a prima facie case in their favor and the burden is shifted to Comptronics to prove payment (Appellant's Brief, pp. 12-14). Comptronics, on the other hand, contends that the implied admission of the genuineness and due execution of the documents does not necessarily mean that IUCP

would be automatically entitled to the money claimed without proof that said amounts are due and unpaid by them (Appellees Brief, p. 14).

It is true that the failure of Comptronics to deny, under oath, the genuineness and due execution of the documents does not carry with it the admission of payment as such is a defense of new matter that maybe alleged in a proper plea to that effect (*Hibberd v. Rohde and McMillian*, 32 Phil. 476 [1915]). They are not estopped from controverting it by evidence of fraud, mistake, compromise, payment, statute of limitations, estoppel and want of consideration (*Bough and Bough v. Cantiveros*, 40 Phil. 209 [1919]). Considering that what is deemed admitted are defenses relating only to the genuineness and due execution of the documents, Comptronics could neither put up the defense that the documents were not signed knowingly and voluntarily nor that they are spurious (*Kalilid Wood Industries Corp. v. IAC*, 155 SCRA 594 [1987]). However, by reason of their failure to deny the execution of the documents, under oath, a prima facie case is made out for IUCP without adducing any proof whatever necessary on the part of the latter to show that Comptronics owed the amount claimed *Chamber of Commerce v. Pua Te Ching*, 14 Phil. 22 [1909], citing several cases).

Except for the self-serving allegations in the answer denying the claims of IUCP, nowhere in the records show that Comptronics proved payment thereof. As a matter of fact, Comptronics rested its case in the court a quo without adducing any evidence. Hence, Comptronics should be held liable to their obligation with IUCP.

As this Court held in the case of *Philippine Commercial and Industrial Bank v. ELRO Development Corp.* (29 SCRA 38 [1969]) -

"The promissory note sued upon was not denied by the defendant under oath but there was a denial of the outstanding balance alleged in the complaint. x x x. If no partial payment had been made and no amount was admitted as due the plaintiff, the thrust of the averments would seem to be that there was no initial obligation incurred at all; and yet the promissory note was not denied under oath x x x. On the other hand, if payments had been made, either partial or total, they should have been alleged with definiteness and evidence thereof duly presented. Neither was done by the defendant, hence, the defendant was held liable." (Underscoring supplied)

PREMISES CONSIDERED, the judgment appealed from is hereby REVERSED and a judgment is hereby RENDERED ordering Comptronics, defendant-appellee herein, to PAY IUCP in accordance with the prayer in the complaint.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Judge Ricardo L. Pronove

** Twelfth Division; penned by Associate Justice Pedro A. Ramirez and concurred in by Associate Justices Luis Javellana and Minerva P.G. Reyes.

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