

## IMPERIAL TEXTILE MILLS, INC., PETITIONER, VS. COURT OF APPEALS AND THE INTERNATIONAL CORPORATE BANK, INC., RESPONDENT.

*G.R. NO. 86568. March 22, 1990*

Ponente: GANCAYCO, J.

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### GANCAYCO, J.:

This case involves the application of Sections 7 and 8 of Rule 8 of the Rules of Court when the action or defense is based on a written document.

The facts are undisputed. In an action for the collection of a sum of money that was filed by the private respondent against petitioner in the Regional Trial Court of Makati, Metro Manila, it was alleged, among others, as follows:

"3. On August 18, 1980, for valuable consideration, defendant executed in favor of, and delivered to plaintiff Promissory Note No. TL-0532-80, copy of which is hereto attached as Annex 'A', whereby defendant obligated itself to pay plaintiff on November 16, 1980 the sum of Twelve Million Pesos (P12,000,000.00) and with interest thereon at the rate of 16% per annum.

"4. The promissory note, Annex 'A', expressly stipulates that in case of non-payment when due, defendant shall pay plaintiff an additional amount equal to 3% per month of the amount due as liquidated damages and a further sum equal to 10% thereof as attorney's fees." [1]

Attached to the complaint as Annex A was the Promissory Note. [2]

An answer to the complaint was filed by petitioner. The petitioner denied liability and alleged that one Julio Tan had no authority to negotiate and obtain a loan on its behalf. While defendant specifically denied the aforesated promissory note alleged in the complaint, the answer was not verified. For this reason, in due course, a decision was rendered by the trial court on December 1, 1986, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff International Corporate Bank, Inc. and against the defendant Imperial Textile Mills, Inc. as follows:

1. Ordering the defendant to pay plaintiff the total sum of P40,486,229.16, with interest thereon at the rate of 16% per annum from 17 June 1985 until fully paid (Cf. Exhibit B - Statement of Account, p. 35, id.);
2. Ordering the defendant to pay plaintiff the sum of P40,000.00 as and for attorney's fees, plus the sum of P47,470.00 as costs. (Cf. Exhibits E, F and G).

SO ORDERED." [3]

Petitioner brought an appeal to the Court of Appeals. In a decision dated October 17, 1988, the Court of Appeals affirmed the judgment appealed from with costs against petitioner. [4]

A motion for reconsideration of said decision was likewise denied by the appellate court.

Hence, this petition.

The petition is devoid of merit. Sections 7 and 8 of Rule 8 of the Rules of Court provide as follows:

"SEC. 7. Action or defense based on document. - Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

"SEC. 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."

No rule is more settled than that in an action based on a written instrument attached to the complaint, if the defendant fails to specifically deny under oath the genuineness and due execution of the instrument, the same is deemed admitted.[5]

Section 7, Rule 8 of the Rules of Court is explicit in that there are two ways of pleading an actionable document, namely:

- (a) by alleging the substance of such written instrument in the pleading and attaching a copy thereof to the pleading; and
- (b) by copying the instrument in the pleading.

The complaint in the present case complied with the first situation under paragraph (a). The complaint alleged the substance of the promissory note subject of the litigation and a copy of the promissory note was attached.

There is no question likewise that the petitioner failed to specifically deny under oath the genuineness and due execution of the promissory note subject of the complaint. By its omission, petitioner clearly admitted the genuineness and due execution of the document and that the party whose signature appears thereon had indeed signed the same and that he has the authority to sign the same and that the agreement between the parties is what was in words and figures in the document. Defenses which are inconsistent with the due execution and genuineness of the written instrument are cut-off by such admission.[6]

The claim of petitioner is that its failure to specifically deny under oath the actionable document does not prevent it from showing that one Julio Tan was not authorized to enter into the transaction and to sign the promissory note for and in behalf of the petitioner. But precisely, the petitioner is a party to the instrument represented by Julio Tan so that it may not now deny the authority of Julio Tan to so represent it.[7] The due execution and genuineness the document have thereby been conclusively established.

Moreover, in this case the judgment appealed from is supported by the evidence. This petition is at best dilatory.

WHEREFORE, the petition is DISMISSED, with costs against petitioner.

**SO ORDERED.**

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

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[1] Page 55, Rollo.

[2] Page 81, Rollo.

[3] Page 87, Rollo.

[4] Mr. Justice Jose C. Campos, Jr. was the ponente, concurred in by Justices Ricardo J. Francisco and Alfredo L. Benipayo.

[5] Section 8, Rule 8, Revised Rules of Court; *Songco v. Sellner*, 37 Phil. 254 (1917); and *Phil. Com. & Industrial Bank v. ELRO Dev. Corp.*, 29 SCRA 38 (1969).

[6] I Moran, *Comments on the Rules of Court*, 326-327.

[7] Section 8, Rule 8, Rules of Court.

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