

ROSELLA D. CANQUE, PETITIONER, VS. THE COURT OF APPEALS AND SOCOR CONSTRUCTION CORPORATION, RESPONDENTS.

G.R. No. 96202. April 13, 1999

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-96202/>

MENDOZA, J.:

This petition for review on certiorari seeks a reversal of the decision[1] of the Court of Appeals affirming the judgment[2] of the Regional Trial Court of Cebu City ordering petitioner -

. . . to pay [private respondent] the principal sum of Two Hundred Ninety Nine Thousand Seven Hundred Seventeen Pesos and Seventy Five Centavos (P299,717.75) plus interest thereon at 12% per annum from September 22, 1986, the date of the filing of the complaint until fully paid; to pay [private respondent] the further sum of Ten Thousand Pesos (P10,000.00) for reasonable attorney's fees; to pay the sum of Five Hundred Fifty Two Pesos and Eighty Six Centavos (P552.86) for filing fees and to pay the costs of suit. Since [private respondent] withdrew its prayer for an alias writ of preliminary attachment vis-a-vis the [petitioner's] counterbond, the incident on the alias writ of preliminary attachment has become moot and academic.

The facts are as follows:

Petitioner Rosella D. Canque is a contractor doing business under the name and style RDC Construction. At the time material to this case, she had contracts with the government for (a) the restoration of Cebu-Toledo wharf road; (b) the asphaltting of Lutopan access road; and (c) the asphaltting of Babag road in Lapulapu City.[3] In connection with these projects, petitioner entered into two contracts with private respondent Socor Construction Corporation. The first contract (Exh. A),[4] dated April 26, 1985, provided:

The Sub-Contractor (SOCOR Corporation) and the Contractor (RDC Construction) for the consideration hereinafter named, hereby agree as follows:

- SCOPE OF WORK:

- The Sub-Contractor agrees to perform and execute the Supply, Lay and Compact Item 310 and Item 302;
- That Contractor shall provide the labor and materials needed to complete the project;
- That the Contractor agrees to pay the Sub-Contractor the price of One Thousand Pesos only (P1,000.00) per Metric Ton of Item 310 and Eight Thousand Only (P8,000.00) per Metric Ton of Item 302.
- That the Contractor shall pay the Sub-Contractor the volume of the supplied Item based on the actual weight in Metric Tons delivered, laid and compacted and accepted by the MPWH;
- The construction will commence upon the acceptance of the offer.

The second contract (Exh. B),[5] dated July 23, 1985, stated:

The Supplier (SOCOR Construction) and the Contractor (RDC Construction) for the consideration hereinafter named, hereby agree as follows:

- SCOPE OF WORK:

- The Supplier agrees to perform and execute the delivery of Item 310 and Item 302 to the jobsite for the Asphaltting of DAS Access Road and the Front Gate of ACMDC, Toledo City;
- That the Contractor should inform or give notice to the Supplier two (2) days before the delivery of such items;
- That the Contractor shall pay the Supplier the volume of the supplied items on the actual weight in metric tons delivered and accepted by the MPWH fifteen (15) days after the submission of the bill;
- The delivery will commence upon the acceptance of the offer.

On May 28, 1986, private respondent sent petitioner a bill (Exh. C), containing a revised computation,[6] for P299,717.75, plus interest at the rate of 3% a month, representing the balance of petitioner's total account of P2,098,400.25 for materials delivered and services rendered by private respondent under the two contracts. However, petitioner refused to pay the amount, claiming that private respondent failed to submit the delivery receipts showing the actual weight in metric tons of the items delivered and the acceptance thereof by the government.[7]

Hence, on September 22, 1986, private respondent brought suit in the Regional Trial Court of Cebu to recover from petitioner the sum of P299,717.75, plus interest at the rate of 3% a month.

In her answer, petitioner admitted the existence of the contracts with private respondent as well as receipt of the billing (Exh. C), dated May 28, 1986. However, she disputed the correctness of the bill -

. . . considering that the deliveries of [private respondent] were not signed and acknowledged by the checkers of [petitioner], the bituminous tack coat it delivered to [petitioner] consisted of 60% water, and [petitioner] has already paid [private respondent] about P1,400,000.00 but [private respondent] has not issued any receipt to [petitioner] for said payments and there is no agreement that [private respondent] will charge 3% per month interest.[8]

Petitioner subsequently amended her answer denying she had entered into sub-contracts with private respondent.[9]

During the trial, private respondent, as plaintiff, presented its vice-president, Sofia O. Sanchez, and Dolores Aday, its bookkeeper.

Petitioner's evidence consisted of her lone testimony.[10]

On June 22, 1988, the trial court rendered its decision ordering petitioner to pay private respondent the sum of P299,717.75 plus interest at 12% per annum, and costs. It held:

. . . [B]y analyzing the plaintiff's Book of Collectible Accounts particularly page 17 thereof (Exh. "K") this Court is convinced that the entries (both payments and billings) recorded thereat are credible. Undeniably, the book contains a detailed account of SOCOR's commercial transactions with RDC which were entered therein in the course of business. We cannot therefore disregard the entries recorded under Exhibit "K" because the fact of their having been made in the course of business carries with it some degree of trustworthiness. Besides, no proof was ever offered to demonstrate the irregularity of the said entries thus, there is then no cogent reason for us to doubt their authenticity.[11]

The trial court further ruled that in spite of the fact that the contracts did not have any stipulation on interest, interest may be awarded in the form of damages under Article 2209 of the Civil Code.[12]

On appeal, the Court of Appeals affirmed. It upheld the trial court's reliance on private respondent's Book of Collectible Accounts (Exh. K) on the basis of Rule 130, §37[13] of the Rules of Court.

Hence, this appeal. Petitioner contends that --

- THE RESPONDENT COURT ERRED IN ADMITTING IN EVIDENCE AS ENTRIES IN THE COURSE OF BUSINESS THE ENTRIES IN PRIVATE RESPONDENT'S BOOK OF COLLECTIBLE ACCOUNTS CONSIDERING THAT THE PERSON WHO MADE SAID ENTRIES ACTUALLY TESTIFIED IN THIS CASE BUT UNFORTUNATELY HAD NO PERSONAL KNOWLEDGE OF SAID ENTRIES.
- THE DECISION OF THE RESPONDENT COURT SHOULD BE REVERSED AS IT HAS ONLY INADMISSIBLE EVIDENCE TO SUPPORT IT.

First. Petitioner contends that the presentation of the delivery receipts duly accepted by the then Ministry of Public Works and Highways (MPWH) is required under the contracts (Exhs. A and B) and is a condition precedent for her payment of the amount claimed by private respondent. Petitioner argues that the entries in private respondent's Book of Collectible Accounts (Exh. K) cannot take the place of the delivery receipts and that such entries are mere hearsay and, thus, inadmissible in evidence.[14]

We agree with the appellate court that the stipulation in the two contracts requiring the submission of delivery receipts does not preclude proof of delivery of materials by private respondent in some other way. The question is whether the entries in the Book of Collectible Accounts (Exh. K) constitute competent evidence to show such delivery. Private respondent cites Rule 130, §37 of the Rules of Court and argues that the entries in question constitute "entries in the course of business" sufficient to prove deliveries made for the government projects. This provision reads:

Entries in the course of business. ¾ Entries made at, or near the time of the transactions to which they refer, by a person deceased, outside of the Philippines or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.[15]

The admission in evidence of entries in corporate books requires the satisfaction of the following conditions:

- The person who made the entry must be dead, outside the country or unable to testify;
- The entries were made at or near the time of the transactions to which they refer;
- The entrant was in a position to know the facts stated in the entries;
- The entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral or religious; and
- The entries were made in the ordinary or regular course of business or duty.[16]

As petitioner points out, the business entries in question (Exh. K) do not meet the first and third requisites. Dolores Aday, who made the entries, was presented by private respondent to testify on the account of RDC Construction. It was in the course of her testimony that the entries were presented and marked in evidence. There was, therefore, neither justification nor necessity for the presentation of the entries as the person who made them was available to testify in court.

Necessity is given as a ground for admitting entries, in that they are the best available evidence. Said a learned judge: "What a man has actually done and committed to writing when under obligation to do the act, it being in the course of the business he has undertaken, and he being dead, there seems to be no danger in submitting to the consideration of the court." The person who may be called to court to testify on these entries being dead,

there arises the necessity of their admission without the one who made them being called to court be sworn and subjected to cross-examination. And this is permissible in order to prevent a failure of justice.[17]

Moreover, Aday admitted that she had no personal knowledge of the facts constituting the entry. She said she made the entries based on the bills given to her. But she has no knowledge of the truth or falsity of the facts stated in the bills. The deliveries of the materials stated in the bills were supervised by "an engineer for (such) functions." [18] The person, therefore, who has personal knowledge of the facts stated in the entries, i.e., that such deliveries were made in the amounts and on the dates stated, was the company's project engineer. The entries made by Aday show only that the billings had been submitted to her by the engineer and that she faithfully recorded the amounts stated therein in the books of account. Whether or not the bills given to Aday correctly reflected the deliveries made in the amounts and on the dates indicated was a fact that could be established by the project engineer alone who, however, was not presented during trial. The rule is stated by former Chief Justice Moran, thus:

[W]hen the witness had no personal knowledge of the facts entered by him, and the person who gave him the information is individually known and may testify as to the facts stated in the entry which is not part of a system of entries where scores of employees have intervened, such entry is not admissible without the testimony of the informer.[19]

Second. It is nonetheless argued by private respondent that although the entries cannot be considered an exception to the hearsay rule, they may be admitted under Rule 132, §10[20] of the Rules of Court which provides:

SEC. 10. When witness may refer to memorandum. $\frac{3}{4}$ A witness may be allowed to refresh his memory respecting a fact, by anything written by himself or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing; but in such case the writing must be produced and may be inspected by the adverse party, who may, if he chooses, cross-examine the witness upon it, and may read it in evidence. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts, if he is able to swear that the writing correctly stated the transaction when made; but such evidence must be received with caution.

On the other hand, petitioner contends that evidence which is inadmissible for the purpose for which it was offered cannot be admitted for another purpose. She cites the following from Chief Justice Moran's commentaries:

The purpose for which the evidence is offered must be specified. Where the offer is general, and the evidence is admissible for one purpose and inadmissible for another, the evidence should be rejected. Likewise, where the offer is made for two or more purposes and the evidence is incompetent for one of them, the evidence should be excluded. The reason for the rule is that "it is the duty of a party to select the competent from the incompetent in offering testimony, and he cannot impose this duty upon the trial court." Where the evidence is inadmissible for the purpose stated in the offer, it must be rejected, though the same may be admissible for another purpose. The rule is stated thus: "If a party x x x opens the particular view with which he offers any part of his evidence, or states the object to be attained by it, he precludes himself from insisting on its operation in any other direction, or for any other object; and the reason is, that the opposite party is prevented from objecting to its competency in any view different from the one proposed.[21]

It should be noted, however, that Exh. K is not really being presented for another purpose. Private respondent's counsel offered it for the purpose of showing the amount of petitioner's indebtedness. He said:

Exhibit "K," your Honor - faithful reproduction of page (17) of the book on Collectible Accounts of the plaintiff, reflecting the principal indebtedness of defendant in the amount of Two hundred ninety-nine thousand seven hundred seventeen pesos and seventy-five centavos (P299,717.75) and reflecting as well the accumulated interest of three percent (3%) monthly compounded such that as of December 11, 1987, the

amount collectible from the defendant by the plaintiff is Six hundred sixteen thousand four hundred thirty-five pesos and seventy-two centavos (P616,435.72);[22]

This is also the purpose for which its admission is sought as a memorandum to refresh the memory of Dolores Aday as a witness. In other words, it is the nature of the evidence that is changed, not the purpose for which it is offered.

Be that as it may, considered as a memorandum, Exh. K does not itself constitute evidence. As explained in *Borromeo v. Court of Appeals*: [23]

Under the above provision (Rule 132, §10), the memorandum used to refresh the memory of the witness does not constitute evidence, and may not be admitted as such, for the simple reason that the witness has just the same to testify on the basis of refreshed memory. In other words, where the witness has testified independently of or after his testimony has been refreshed by a memorandum of the events in dispute, such memorandum is not admissible as corroborative evidence. It is self-evident that a witness may not be corroborated by any written statement prepared wholly by him. He cannot be more credible just because he supports his open-court declaration with written statements of the same facts even if he did prepare them during the occasion in dispute, unless the proper predicate of his failing memory is priorly laid down. What is more, even where this requirement has been satisfied, the express injunction of the rule itself is that such evidence must be received with caution, if only because it is not very difficult to conceive and fabricate evidence of this nature. This is doubly true when the witness stands to gain materially or otherwise from the admission of such evidence [24]

As the entries in question (Exh. K) were not made based on personal knowledge, they could only corroborate Dolores Aday's testimony that she made the entries as she received the bills.

Third. Does this, therefore, mean there is no competent evidence of private respondent's claim as petitioner argues? [25] The answer is in the negative. Aside from Exh. K, private respondent presented the following documents:

- 1) Exhibit A - Contract Agreement dated 26 April 1985 which contract covers both the Toledo wharf project and the Babag Road project in Lapulapu City.
- 2) Exhibit B - Contract Agreement dated 23 July 1985 which covers the DAS Asphaltting Project.
- 3) Exhibit C - Revised Computation of Billings submitted on May 28, 1986.
- 4) Exhibit D - an affidavit executed by [petitioner] to the effect that she has no more pending or unsettled obligations as far as Toledo Wharf Road is concerned.
- 5) Exhibit D-1 - Statement of Work Accomplished on the Road Restoration of Cebu-Toledo wharf project.
- 6) Exhibit E - another affidavit executed by [petitioner] attesting that she has completely paid her laborers at the project located at Babag, Lapulapu City
- 7) Exhibits F, G, G-1, G-2, G-3 - Premiums paid by [private respondent] together with the receipts for filing fees.
- 8) Exhibits H, I, J - certifications issued by OIC, MPWH, Regional Office; Lapulapu City, City Engineer; Toledo City Treasurer's Office respectively, proving that RDC construction has no more collectibles with all the said government offices in connection with its projects.
- 10) Exhibit L - Bill No. 057 under the account of RDC Construction in the amount of P153,382.75 dated August 24, 1985.

11) Exhibit M - Bill No. 069 (RDC's account), in the amount of P1,701,795.00 dated November 20, 1985.

12) Exhibit N - Bill No. 071 (RDC's account) in the amount of P47,250.00 dated November 22, 1985.

13) Exhibit O - Bill No. 079 (RDC's account) in the amount of P7,290.00 dated December 6, 1985.

As the trial court found:

The entries recorded under Exhibit "K" were supported by Exhibits "L", "M", "N", "O" which are all Socor Billings under the account of RDC Construction. These billings were presented and duly received by the authorized representatives of defendant. The circumstances obtaining in the case at bar clearly show that for a long period of time after receipt thereof, RDC never manifested its dissatisfaction or objection to the aforestated billings submitted by plaintiff. Neither did defendant immediately protest to plaintiff's alleged incomplete or irregular performance. In view of these facts, we believe Art. 1235 of the New Civil Code is applicable.

Art. 1235. When the obligee accepts the performance, knowing its incompleteness and irregularity and without expressing any protest or objection, the obligation is deemed complied with.

FINALLY, after a conscientious scrutiny of the records, we find Exhibit "D-1" (p. 85 record) to be a material proof of plaintiff's complete fulfillment of its obligation.

There is no question that plaintiff supplied RDC Construction with Item 302 (Bituminous Prime Coat), Item 303 (Bituminous Tack Coat) and Item 310 (Bituminous Concrete Surface Course) in all the three projects of the latter. The Lutopan Access Road project, the Toledo wharf project and the Babag-Lapulapu Road project.

On the other hand, no proof was ever offered by defendant to show the presence of other contractors in those projects. We can therefore conclude that it was Socor Construction Corp. ALONE who supplied RDC with Bituminous Prime Coat, Bituminous Tack Coat and Bituminous Concrete Surface Course for all the aforementioned three projects.[26]

Indeed, while petitioner had previously paid private respondent about P1,400,000.00 for deliveries made in the past, she did not show that she made such payments only after the delivery receipts had been presented by private respondent. On the other hand, it appears that petitioner was able to collect the full amount of project costs from the government, so that petitioner would be unjustly enriched at the expense of private respondent if she is not made to pay what is her just obligation under the contracts.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Justice Pedro A. Ramirez and concurred in by Justices Rodolfo A. Nocon and Jesus M. Elbinias.

[2] Per Judge Juanito A. Bernad.

[3] CA Decision, p. 1; Rollo, p. 15.

[4] Records-RTC, p. 53.

[5] Records-RTC, p. 54.

[6] Exhibit C, Records-RTC, p. 55.

[7] CA Decision, p. 2; Rollo, p. 16.

[8] Answer, p. 1; Records-RTC, p. 25.

[9] Amended Answer, pp. 1-2; Records-RTC, pp. 35-36.

[10] RTC-Decision, p. 3.

[11] Id., at 4.

[12] Id., at 6-7.

[13] Now Rule 130, §43 of the Revised Rules on Evidence.

[14] Id. at 8-9; id. at 10-11.

[15] Now Rule 130, §43 of the Revised Rules on Evidence.

[16] 2 Florenz D. Regalado, Remedial Law Compendium 616 (1995).

[17] 7 VICENTE J. FRANCISCO, THE REVISED RULES OF COURT (EVIDENCE) 538-539 (1973).

[18] TSN, pp. 35-36, Jan. 4, 1988.

[19] 5 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 374 (1980).

[20] Now Rule 132, §16 of the present Rules on Evidence.

[21] 6 MORAN, COMMENTS ON THE RULES OF COURT 123 (1980).

[22] TSN, p. 49, Jan. 4, 1988.

[23] 70 SCRA 329 (1976).

[24] Supra, at 349.

[25] Petition, p. 11, Rollo, p. 13.

[26] RTC Decision, p. 5.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.