

THIRD DIVISION

[G.R. No. 194128, December 07, 2011]

**WESTMONT INVESTMENT CORPORATION, PETITIONER, VS.
AMOS P. FRANCIA, JR., CECILIA ZAMORA, BENJAMIN FRANCIA,
AND PEARLBANK SECURITIES, INC., RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

At bench is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the (1) July 27, 2010 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 84725, which affirmed with modification the September 27, 2004 Decision^[2] of the Regional Trial Court, Branch 56, Makati City (RTC) in Civil Case No. 01-507; and (2) its October 14, 2010 Resolution,^[3] which denied the motion for the reconsideration thereof.

THE FACTS:

On March 27, 2001, respondents Amos P. Francia, Jr., Cecilia Zamora and Benjamin Francia (*the Francias*) filed a Complaint for Collection of Sum of Money and Damages^[4] arising from their investments against petitioner Westmont Investment Corporation (Wincorp) and respondent Pearlbank Securities Inc. (*Pearlbank*) before the RTC.

Wincorp and Pearlbank filed their separate motions to dismiss.^[5] Both motions were anchored on the ground that the complaint of the Francias failed to state a cause of action. On July 16, 2001, after several exchanges of pleadings, the RTC issued an order^[6] dismissing the motions to dismiss of Wincorp and Pearlbank for lack of merit.

Wincorp then filed its Answer,^[7] while Pearlbank filed its Answer with Counterclaim and Crossclaim (against Wincorp).^[8]

The case was set for pre-trial but before pre-trial conference could be held, Wincorp filed its Motion to Dismiss Crossclaim^[9] of Pearlbank to which the latter filed an opposition.^[10] The RTC denied Wincorp's motion to dismiss crossclaim.^[11]

The pre-trial conference was later conducted after the parties had filed their respective pre-trial briefs. The parties agreed on the following stipulation of facts, as contained in the Pre-Trial Order^[12] issued by the RTC on April 17, 2002:

1. The personal and juridical circumstances of the parties meaning, the plaintiffs and both corporate defendants;
2. That plaintiffs caused the service of a demand letter on Pearl Bank on February 13, 2001 marked as Exhibit E;
3. **Plaintiffs do not have personal knowledge as to whether or not Pearl Bank indeed borrowed the funds allegedly invested by the plaintiff from Wincorp;** and
4. **That the alleged confirmation advices which indicate Pearl Bank as alleged borrower of the funds allegedly invested by the plaintiffs in Wincorp do not bear the signature or acknowledgment of Pearl Bank.** (Emphases supplied)

After several postponements requested by Wincorp, trial on the merits finally ensued. The gist of the testimony of Amos Francia, Jr. (*Amos*) is as follows:

1. Sometime in 1999, he was enticed by Ms. Lalaine Alcaraz, the bank manager of Westmont Bank, Meycauayan, Bulacan Branch, to make an investment with Wincorp, the bank's financial investment arm, as it was offering interest rates that were 3% to 5% higher than regular bank interest rates. Due to the promise of a good return of investment, he was convinced to invest. He even invited his sister, Cecilia Zamora and his brother, Benjamin Francia, to join him. Eventually, they placed their investment in the amounts of P1,420,352.72 and P2,522,745.34 with Wincorp in consideration of a net interest rate of 11% over a 43-day spread. Thereafter, Wincorp, through Westmont Bank, issued Official Receipt Nos. 470844^[13] and 470845,^[14] both dated January 27, 2000, evidencing the said transactions.^[15]
2. When the 43-day placement matured, the Francias wanted to retire their investments but they were told that Wincorp had no funds. Instead, Wincorp "rolled-over" their placements and issued Confirmation Advices^[16] extending their placements for another 34 days. The said confirmation advices indicated the name of the borrower as Pearlbank. The maturity values were P1,435,108.61 and P2,548,953.86 with a due date of April 13, 2000.
3. On April 13, 2000, they again tried to get back the principal amount they invested plus interest but, again, they were frustrated.^[17]
4. Constrained, they demanded from Pearlbank^[18] their investments. There were several attempts to settle the case, but all proved futile.

After the testimony of Amos Francia, Jr., the Francias filed their Formal Offer of Evidence.^[19] Pearlbank filed its Comment/Objection,^[20] while Wincorp did not file any comment or objection. After all the exhibits of the Francias were admitted for

the purposes they were offered, the Francias rested their case.

Thereafter, the case was set for the presentation of the defense evidence of Wincorp. On March 7, 2003, three (3) days before the scheduled hearing, Wincorp filed a written motion to postpone the hearing on even date, as its witness, Antonio T. Ong, was unavailable because he had to attend a congressional hearing. Wincorp's substitute witness, Atty. Nemesio Briones, was likewise unavailable due to a previous commitment in the Securities and Exchange Commission.

The RTC denied Wincorp's Motion to Postpone and considered it to have waived its right to present evidence.^[21] The Motion for Reconsideration of Wincorp was likewise denied.^[22]

On August 14, 2003, Pearlbank filed its Demurrer to Evidence.^[23] The RTC granted the same in its Order^[24] dated January 12, 2004. Hence, the complaint against Pearlbank was dismissed, while the case was considered submitted for decision insofar as Wincorp was concerned.

On September 27, 2004, the RTC rendered a decision^[25] in favor of the Francias and held Wincorp solely liable to them. The dispositive portion thereof reads:

WHEREFORE, judgment is rendered ordering defendant Westmont Investment Corporation to pay the plaintiffs, the following amounts:

1. P3,984,062.47 representing the aggregate amount of investment placements made by plaintiffs, plus 11% per annum by way of stipulated interest, to be counted from 10 March 2000 until fully paid; and
2. 10% of the above-mentioned amount as and for attorney's fees and costs of suit.

SO ORDERED.

Wincorp then filed a motion for reconsideration, but it was denied by the RTC in its Order^[26] dated November 10, 2004.

Not in conformity with the pronouncement of the RTC, Wincorp interposed an appeal with the CA, alleging the following arguments:

I. THE REGIONAL TRIAL COURT ERRED WHEN IT HELD THAT WINCORP AS AGENT OF PLAINTIFFS-APPELLEES WAS LIABLE TO THE LATTER NOTWITHSTANDING THE CLEAR WRITTEN AGREEMENT TO THE CONTRARY;

II. THE REGIONAL TRIAL COURT ALSO ERRED WHEN IT HELD THAT PEARLBANK, THE ACTUAL BORROWER AND RECIPIENT OF THE MONEY INVOLVED IS NOT LIABLE TO THE PLAINTIFFS-APPELLEES; and

III. THE REGIONAL TRIAL COURT ERRED IN DISMISSING ALL TOGETHER THE CROSS-CLAIM OF WINCORP AGAINST PEARLBANK.^[27]

The CA *affirmed with modification* the ruling of the RTC in its July 27, 2010 Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the present Appeal is **DENIED**. The Decision dated 27 September 2004 of the Regional Trial Court, Branch 56, Makati City in Civil Case No. 01-507 is hereby **AFFIRMED WITH MODIFICATION** of the awards. Defendant-appellant Wincorp is hereby ordered to pay plaintiffs-appellees the amounts of P3,984,062.47 plus 11% per annum by way of stipulated interest to be computed from 13 April 2000 until fully paid and P100,000.00 as attorney's fees and cost of suit."

SO ORDERED.

The CA explained:

After a careful and judicious scrutiny of the records of the present case, together with the applicable laws and jurisprudence, this Court finds defendant-appellant Wincorp solely liable to pay the amount of P3,984,062.47 plus 11% interest per annum computed from 10 March 2000 to plaintiffs-appellees.

Preliminarily, the Court will rule on the procedural issues raised to know what pieces of evidence will be considered in this appeal.

Section 34, Rule 132 of the Rules on Evidence states that:

"The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court. Evidence not formally offered during the trial can not be used for or against a party litigant. Neither may it be taken into account on appeal.

The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered shall be excluded and rejected.

Prescinding therefrom, the very glaring conclusion is that all the documents attached in the motion for reconsideration of the decision of the trial court and all the documents attached in the defendant-appellant's brief filed by defendant-appellant Wincorp **cannot be given any probative weight or credit for the sole reason that the said documents were not formally offered as evidence in the trial court because to consider them at this stage will deny the other parties the right to rebut them.**

The arguments of defendant-appellant Wincorp that the plaintiffs-appellees made an erroneous offer of evidence as the documents were offered to prove what is contrary to its content and that they made a violation of the parol evidence rule do not hold water.

It is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.

As to oral evidence, objection thereto must likewise be raised at the earliest possible time, that is, after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given.

x x x

In the case at bench, a perusal of the records shows that the plaintiffs-appellees have sufficiently established their cause of action by preponderance of evidence. The fact that on 27 January 2000, plaintiffs-appellees placed their investment in the amounts of P1,420,352.72 and P2,522,754.34 with defendant-appellant Wincorp to earn a net interest at the rate of 11% over a 43-day period was distinctly proved by the testimony of plaintiff-appellee Amos Francia, Jr. and supported by Official Receipt Nos. 470844 and 470845 issued by defendant-appellant Wincorp through Westmont Bank. The facts that plaintiffs-appellees failed to get back their investment after 43 days and that their investment was rolled over for another 34 days were also established by their oral evidence and confirmed by the Confirmation Advices issued by defendant-appellant Wincorp, which indicate that their investment already amounted to P1,435,108.61 and P2,548,953.86 upon its maturity on 13 April 2000. Likewise, the fact that plaintiffs-appellees' investment was not returned to them until this date by defendant-appellant Wincorp was proved by their evidence. To top it all, defendant-appellant Wincorp never negated these established facts because defendant-appellant Wincorp's claim is that it received the money of plaintiffs-appellees but it merely acted as an agent of plaintiffs-appellees and that the actual borrower of plaintiffs-appellees' money is defendant-appellee PearlBank. Hence, defendant-appellant Wincorp alleges that it should be the latter who must be held liable to the plaintiffs-appellees.