482 Phil. 193

SECOND DIVISION

[G.R. NO. 140608, September 23, 2004]

PERMANENT SAVINGS AND LOAN BANK, PETITIONER, VS. MARIANO VELARDE, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

In a complaint for sum of money filed before the Regional Trial Court of Manila (Branch 37), docketed as Civil Case No. 94-71639, petitioner Permanent Savings and Loan Bank sought to recover from respondent Mariano Velarde, the sum of ₱1,000,000.00 plus accrued interests and penalties, based on a loan obtained by respondent from petitioner bank, evidenced by the following: (1) promissory note dated September 28, 1983;[1] (2) loan release sheet dated September 28, 1983;[2] and (3) loan disclosure statement dated September 28, 1983.[3] Petitioner bank, represented by its Deputy Liquidator after it was placed under liquidation, sent a letter of demand to respondent on July 27, 1988, demanding full payment of the loan.[4] Despite receipt of said demand letter,[5] respondent failed to settle his account. Another letter of demand was sent on February 22, 1994,[6] and this time, respondent's counsel replied, stating that the obligation "is not actually existing but covered by contemporaneous or subsequent agreement between the parties …"[7]

In his Answer, respondent disclaims any liability on the instrument, thus:

> 2. The allegations in par. 2, Complaint, on the existence of the alleged loan of ₱1-Million, and the purported documents evidencing the same, only the signature appearing at the back of the promissory note, Annex "A" seems to be that of herein defendant. However, as to any liability arising therefrom, the receipt of the said amount of ₱1-Million shows that the amount was received by another person, not the herein defendant. Hence, no liability attaches and as further stated in the special and affirmative defenses that, assuming the promissory note exists, it does not bind much less is there the intention by the parties to bind the herein defendant. In other words, the documents relative to the loan do not express the true intention of the parties.[8]

Respondent's Answer also contained a denial under oath, which reads:

> I, MARIANO Z. VELARDE, of age, am the defendant in this case, that I caused the preparation of the complaint and that all the allegations thereat are true and correct; that the promissory note sued upon, assuming that it exists and bears the genuine signature of herein defendant, the same does not bind him and that it did not truly express the real intention of the parties as stated in the defenses; …[9]

During pre-trial, the issues were defined as follows:

1. Whether or not the defendant has an outstanding loan obligation granted by the plaintiff;

2. Whether or not the defendant is obligated to pay the loan including interests and attorney's fees;

3. Whether or not the defendant has really executed the Promissory Note considering the doubt as to the genuineness of the signature and as well as the non-receipt of the said amount;

4. Whether or not the obligation has prescribed on account of the lapse of time from date of execution and demand for enforcement; and

5. Whether or not the defendant is entitled to his counterclaim and other damages.[10]

On September 6, 1995, petitioner bank presented its sole witness, Antonio Marquez, the Assistant Department Manager of the Philippine Deposit Insurance Corporation (PDIC) and the designated Deputy Liquidator for petitioner bank, who identified the Promissory Note[11] dated September 28, 1983, the Loan Release Sheet[12] dated September 28, 1983, and the Disclosure Statement of Loan Credit Transaction.[13]

After petitioner bank rested its case, respondent, instead of presenting evidence, filed with leave of court his demurrer to evidence, alleging the grounds that:

(a) PLAINTIFF FAILED TO PROVE ITS CASE BY PREPONDERANCE OF EVIDENCE.

(b) THE CAUSE OF ACTION, CONCLUDING ARGUENTI THAT IT EXISTS, IS BARRED BY PRESCRIPTION AND/OR LACHES. [14]

The trial court, in its Decision dated January 26, 1996, found merit in respondent's demurrer to evidence and dismissed the complaint including respondent's counterclaims, without pronouncement as to costs.[15]

On appeal, the Court of Appeals agreed with the trial court and affirmed the dismissal of the complaint in its Decision[16] dated October 27, 1999.[17] The appellate court found that petitioner failed to present any evidence to prove the existence of respondent's alleged loan obligations, considering that respondent denied petitioner's allegations in its complaint. It also found that petitioner bank's cause of action is already barred by prescription.[18]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules Court, with the following assignment of errors:

4.1

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER FAILED

TO ESTABLISH THE GENUINENESS, DUE EXECUTION AND AUTHENTICITY OF THE SUBJECT LOAN DOCUMENTS.

4.2

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER'S CAUSE OF ACTION IS ALREADY BARRED BY PRESCRIPTION AND OR LACHES.[19]

Before going into the merits of the petition, the Court finds it necessary to reiterate the well-settled rule that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, as "the Supreme Court is not a trier of facts."[20] It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.[21]

There are, however, exceptions to the rule, *e.g.*, when the factual inferences of the appellate court are manifestly mistaken; the judgment is based on a misapprehension of facts; or the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different legal conclusion.[22] This case falls under said exceptions.

The pertinent rule on actionable documents is found in Rule 8, Section 7 of the Rules of Court which provides that when the cause of action is anchored on a document, the genuineness or due execution of the instrument shall be deemed impliedly admitted unless the defendant, under oath, specifically denies them, and sets forth what he claims to be the facts.

It was the trial court's opinion that:

> The mere presentation of supposed documents regarding the loan, but absent the testimony of a competent witness to the transaction and the documentary evidence, coupled with the denial of liability by the defendant does not suffice to meet the requisite preponderance of evidence in civil cases. The documents, standing alone, unsupported by independent evidence of their existence, have no legal basis to stand on. They are not competent evidence. Such failure leaves this Court without ample basis to sustain the plaintiff's cause of action and other reliefs prayed for. The loan document being challenged. (*sic*) Plaintiff did not exert additional effort to strengthen its case by the required preponderance of evidence. On this score, the suit must be dismissed. [23]

The Court of Appeals concurred with the trial court's finding and affirmed the dismissal of the complaint, viz.:

> … The bank should have presented at least a single witness qualified to testify on the existence and execution of the documents it relied upon to prove the disputed loan obligations of Velarde. … This falls short of the requirement that *(B)efore any private writing may be received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the writing executed; (b) By evidence of the genuineness of the handwriting of the maker; or (c) By a subscribing witness.* (Rule 132, Sec. 21, Rules of Court) …

> It is not true, as the Bank claims, that there is no need to prove the loan and its supporting papers as Velarde has already admitted these. Velarde had in fact denied these in his responsive pleading. And consistent with his denial, he objected to the presentation of Marquez as a witness to identify the Exhibits of the Bank, and objected to their admission when these were offered as evidence. Though these were grudgingly admitted anyway, still *admissibility of evidence should not be equated with weight of evidence*. …[24]

A reading of respondent's Answer, however, shows that respondent did not specifically deny that he signed the loan documents. What he merely stated in his Answer was that the signature appearing at the back of the promissory note seems to be his. Respondent also denied any liability on the promissory note as he allegedly did not receive the amount stated therein, and the loan documents do not express the true intention of the parties.[25] Respondent reiterated these allegations in his "denial under oath," stating that "the promissory note sued upon, assuming that it exists and bears the genuine signature of herein defendant, the same does not bind him and that it did not truly express the real intention of the parties as stated in the defenses …"[26]

Respondent's denials do not constitute an effective specific denial as contemplated by law. In the early case of *Songco vs. Sellner*,[27] the Court expounded on how to deny the genuineness and due execution of an actionable document, viz.:

> … This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either.

In fact, respondent's allegations amount to an implied admission of the due execution and genuineness of the promissory note. The admission of the genuineness and due execution of a document means that the party whose signature it bears admits that he voluntarily signed the document or it was signed by another for him and with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formalities required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him.[28] Also, it effectively eliminated any defense relating to the authenticity and due execution of the document, *e.g.*, that the document was spurious, counterfeit, or of different import on its face as the one executed by the parties; or that the signatures appearing thereon were forgeries; or that the signatures were unauthorized.[29]

Clearly, both the trial court and the Court of Appeals erred in concluding that respondent specifically denied petitioner's allegations regarding the loan documents, as respondent's Answer shows that he failed to specifically deny under oath the genuineness and due execution of the promissory note and its concomitant

documents. Therefore, respondent is deemed to have admitted the loan documents and acknowledged his obligation with petitioner; and with respondent's implied admission, it was not necessary for petitioner to present further evidence to establish the due execution and authenticity of the loan documents sued upon.

While Section 22, Rule 132 of the Rules of Court requires that private documents be proved of their due execution and authenticity before they can be received in evidence, *i.e.,* presentation and examination of witnesses to testify on this fact; in the present case, there is no need for proof of execution and authenticity with respect to the loan documents because of respondent's implied admission thereof. [30]

Respondent claims that he did not receive the net proceeds in the amount of ₱988,333.00 as stated in the Loan Release Sheet dated September 23, 1983.[31] The document, however, bears respondent's signature as borrower.[32] *Res ipsa loquitur*.[33] The document speaks for itself. Respondent has already impliedly admitted the genuineness and due execution of the loan documents. No further proof is necessary to show that he undertook the obligation with petitioner. "A person cannot accept and reject the same instrument."[34]

The Court also finds that petitioner's claim is not barred by prescription.

Petitioner's action for collection of a sum of money was based on a written contract and prescribes after ten years from the time its right of action arose.[35] The prescriptive period is *interrupted* when there is a written extrajudicial demand by the creditors.[36] The interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand.[37]

Thus, in the case of *The Overseas Bank of Manila vs. Geraldez*,[38] the Court categorically stated that the correct meaning of *interruption* as distinguished from mere *suspension* or *tolling* of the prescriptive period is that said period would commence anew from the receipt of the demand. In said case, the respondents Valenton and Juan, on February 16, 1966, obtained a credit accommodation from the Overseas Bank of Manila in the amount of ₱150,000.00. Written extrajudicial demands dated February 9, March 1 and 27, 1968, November 13 and December 8, 1975 and February 7 and August 27, 1976 were made upon the respondents but they refused to pay. When the bank filed a case for the recovery of said amount, the trial court dismissed the same on the ground of prescription as the bank's cause of action accrued on February 16, 1966 (the date of the manager's check for ₱150,000.00 issued by the plaintiff bank to the Republic Bank) and the complaint was filed only on October 22, 1976. Reversing the ruling of the trial court, the Court ruled:

> An action upon a written contract must be brought within ten years from the time the right of action accrues (Art. 1144[1], Civil Code). "The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor" (Art. 1155, Ibid, applied in Gonzalo Puyat & Sons, Inc. vs. City of Manila, 117