

## THIRD DIVISION

[ G.R. No. 138739, July 06, 2000 ]

**RADIOWEALTH FINANCE COMPANY, PETITIONER, VS . SPOUSES  
VICENTE AND MA. SUMILANG DEL ROSARIO, RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

When a demurrer to evidence granted by a trial court is reversed on appeal, the reviewing court cannot remand the case for further proceedings. Rather, it should render judgment on the basis of the evidence proffered by the plaintiff. Inasmuch as defendants in the present case admitted the due execution of the Promissory Note both in their Answer and during the pretrial, the appellate court should have rendered judgment on the bases of that Note and on the other pieces of evidence adduced during the trial.

#### The Case

Before us is a Petition for Review on Certiorari of the December 9, 1997 Decision<sup>[1]</sup> and the May 3, 1999 Resolution<sup>[2]</sup> of the Court of Appeals in CA-GR CV No. 47737. The assailed Decision disposed as follows:

"WHEREFORE, premises considered, the appealed order (dated November 4, 1994) of the Regional Trial Court (Branch XIV) in the City of Manila in Civil Case No. 93-66507 is hereby REVERSED and SET ASIDE. Let the records of this case be remanded to the court a quo for further proceedings. No pronouncement as to costs."<sup>[3]</sup>

The assailed Resolution denied the petitioner's Partial Motion for Reconsideration.<sup>[4]</sup>

#### The Facts

The facts of this case are undisputed. On March 2, 1991, Spouses Vicente and Maria Sumilang del Rosario (herein respondents), jointly and severally executed, signed and delivered in favor of Radiowealth Finance Company (herein petitioner), a Promissory Note<sup>[5]</sup> for P138,948. Pertinent provisions of the Promissory Note read:

"FOR VALUE RECEIVED, on or before the date listed below, I/We promise to pay jointly and severally Radiowealth Finance Co. or order the sum of ONE HUNDRED THIRTY EIGHT THOUSAND NINE HUNDRED FORTY EIGHT Pesos (P138,948.00) without need of notice or demand, in installments as follows:

P11,579.00 payable for 12 consecutive months starting on \_\_\_\_\_ 19\_\_ until the amount of P11,579.00 is fully paid.

Each installment shall be due every \_\_\_\_ day of each month.  
A late payment penalty charge of two and a half (2.5%) percent per month shall be added to each unpaid installment from due date thereof until fully paid.

x x x

x x x  
x

x x

It is hereby agreed that if default be made in the payment of any of the installments or late payment charges thereon as and when the same becomes due and payable as specified above, the total principal sum then remaining unpaid, together with the agreed late payment charges thereon, shall at once become due and payable without need of notice or demand.

x x x

x x x

x x x

If any amount due on this Note is not paid at its maturity and this Note is placed in the hands of an attorney or collection agency for collection, I/We jointly and severally agree to pay, in addition to the aggregate of the principal amount and interest due, a sum equivalent to ten (10%) per cent thereof as attorney's and/or collection fees, in case no legal action is filed, otherwise, the sum will be equivalent to twenty-five (25%) percent of the amount due which shall not in any case be less than FIVE HUNDRED PESOS (P500.00) plus the cost of suit and other litigation expenses and, in addition, a further sum of ten per cent (10%) of said amount which in no case shall be less than FIVE HUNDRED PESOS (P500.00), as and for liquidated damages."<sup>[6]</sup>

Thereafter, respondents defaulted on the monthly installments. Despite repeated demands, they failed to pay their obligations under their Promissory Note.

On June 7, 1993, petitioner filed a Complaint<sup>[7]</sup> for the collection of a sum of money before the Regional Trial Court of Manila, Branch 14.<sup>[8]</sup> During the trial, Jasmer Famatico, the credit and collection officer of petitioner, presented in evidence the respondents' check payments, the demand letter dated July 12, 1991, the customer's ledger card for the respondents, another demand letter and Metropolitan Bank dishonor slips. Famatico admitted that he did not have personal knowledge of the transaction or the execution of any of these pieces of documentary evidence, which had merely been endorsed to him.

On July 4, 1994, the trial court issued an Order terminating the presentation of evidence for the petitioner.<sup>[9]</sup> Thus, the latter formally offered its evidence and exhibits and rested its case on July 5, 1994.

Respondents filed on July 29, 1994 a Demurrer to Evidence<sup>[10]</sup> for alleged lack of cause of action. On November 4, 1994, the trial court dismissed<sup>[11]</sup> the complaint for failure of petitioner to substantiate its claims, the evidence it had presented being merely hearsay.

On appeal, the Court of Appeals (CA) reversed the trial court and remanded the

case for further proceedings.

Hence, this recourse.<sup>[12]</sup>

### **Ruling of the Court of Appeals**

According to the appellate court, the judicial admissions of respondents established their indebtedness to the petitioner, on the grounds that they admitted the due execution of the Promissory Note, and that their only defense was the absence of an agreement on when the installment payments were to begin. Indeed, during the pretrial, they admitted the genuineness not only of the Promissory Note, but also of the demand letter dated July 12, 1991. Even if the petitioner's witness had no personal knowledge of these documents, they would still be admissible "if the purpose for which [they are] produced is merely to establish the fact that the statement or document was in fact made or to show its tenor[,] and such fact or tenor is of independent relevance."

Besides, Articles 19 and 22 of the Civil Code require that every person must -- in the exercise of rights and in the performance of duties -- act with justice, give all else their due, and observe honesty and good faith. Further, the rules on evidence are to be liberally construed in order to promote their objective and to assist the parties in obtaining just, speedy and inexpensive determination of an action.

### **Issue**

The petitioner raises this lone issue:

"The Honorable Court of Appeals patently erred in ordering the remand of this case to the trial court instead of rendering judgment on the basis of petitioner's evidence."<sup>[13]</sup>

For an orderly discussion, we shall divide the issue into two parts: (a) legal effect of the Demurrer to Evidence, and (b) the date when the obligation became due and demandable.

### **The Court's Ruling**

The Petition has merit. While the CA correctly reversed the trial court, it erred in remanding the case "for further proceedings."

### **Consequences of a Reversal, on Appeal, of a Demurrer to Evidence**

Petitioner contends that if a demurrer to evidence is reversed on appeal, the defendant should be deemed to have waived the right to present evidence, and the appellate court should render judgment on the basis of the evidence submitted by the plaintiff. A remand to the trial court "for further proceedings" would be an outright defiance of Rule 33, Section 1 of the 1997 Rules of Court.

On the other hand, respondents argue that the petitioner was not necessarily entitled to its claim, simply on the ground that they lost their right to present evidence in support of their defense when the Demurrer to Evidence was reversed

on appeal. They stress that the CA merely found them indebted to petitioner, but was silent on when their obligation became due and demandable.

The old Rule 35 of the Rules of Court was reworded under Rule 33 of the 1997 Rules, but the consequence on appeal of a demurrer to evidence was not changed. As amended, the pertinent provision of Rule 33 reads as follows:

"SECTION 1. *Demurrer to evidence.*--After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."<sup>[14]</sup>

Explaining the consequence of a demurrer to evidence, the Court in Villanueva Transit v. Javellana<sup>[15]</sup> pronounced:

"The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e., demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court *denies* the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. The doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is *granted* by the trial court, and the order of dismissal is *reversed on appeal*, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence." (Underscoring supplied)

In other words, defendants who present a demurrer to the plaintiff's evidence retain the right to present their own evidence, if the trial court disagrees with them; if the trial court agrees with them, but on appeal, the appellate court disagrees with both of them and reverses the dismissal order, the defendants lose the right to present their own evidence.<sup>[16]</sup> The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage