

SECOND DIVISION

[G.R. No. 114942, November 27, 2000]

**MAUNLAD SAVINGS & LOAN ASSOCIATION, INC., PETITIONER,
VS. THE HON. COURT OF APPEALS AND VICTOR T. NUBLA,
RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] and the Resolution^[2] of the Court of Appeals dated July 9, 1993 and April 4, 1994, respectively, reversing, for having been issued with grave abuse of discretion, the Orders of the Regional Trial Court of Binangonan, Rizal, Branch 68 dated September 18, 1992^[3] and February 12, 1993^[4] in Civil Case No. 212-B which denied private respondent Victor T. Nubla's motion to admit amended answer and motion for submission of petitioner Maunlad Savings & Loan Association, Inc.'s (hereafter, Maunlad Savings) documents marked as defense evidence by private respondent.

The facts are as follows:

On August 27, 1986, petitioner Maunlad Savings instituted a complaint^[5] for sum of money against private respondent Victor T. Nubla and Vicente Nubla on the basis of a promissory note^[6] allegedly executed by the Nublas on May 4, 1984 to secure a loan amounting to P700,000.00 which, upon maturity on May 4, 1985 and despite repeated demands, the Nublas failed to pay and continuously defaulted, and which as of the final demand letter on July 24, 1986 amounted to P1,290,786.00, inclusive of interests and penalties.

The Nublas filed their Answer^[7] admitting that they executed the promissory note but denied any liability thereunder, alleging that they did not receive any value out of the transaction nor did the said document reflect the real agreement between the parties inasmuch as the transaction sued upon was actually the obligation of Ever-Realty and Development Corporation (hereafter, Ever-Rise). However, the said Answer was not under oath.

Following the pre-trial conference, petitioner Maunlad Savings presented its evidence relying on the admission by the Nublas of the genuineness and due execution of the subject promissory note inasmuch as their answer was not under oath as required by Section 8, Rule 8^[8] of the Rules of Court. Aurea del Rosario, petitioner's Account Officer, testified on August 19, 1987 and produced in open court the Offering Ticket stipulating the material agreements of the loan transaction. Upon the request of the counsel for the Nublas, the offering ticket was marked as their Exhibit "1". Another witness, Noli T. Lipio, testified on October 19, 1987 and presented a Deed of Assignment which showed that Maunlad applied the proceeds of

the loan to another account. This deed of assignment was marked as Exhibit "3" for the Nublas. After the completion of the presentation of its evidence, it formally offered in evidence its documentary exhibits on December 1, 1987 and rested its case after the trial court admitted them on June 5, 1988.

On July 6, 1988, the Nublas commenced the presentation of their evidence. Private respondent Victor T. Nubla testified that the loan documents and the promissory note did not embody the real agreement of the parties because they signed blank documents on the understanding that they were signing as representatives of Ever-Rise, and not in their personal capacity. When cross-examined, private respondent Nubla maintained that he and his brother, Vicente Nubla signed the promissory note in blank. On redirect examination, private respondent Nubla testified that the loan documents and the promissory note were erroneous because Maunlad Savings, in filling up the blanks, did not include the name of Ever-Rise as principal obligor. The Nublas finally concluded their evidence on January 23, 1991, following the testimony of their third witness.

The Nublas then filed their Formal Offer of Documentary Exhibits dated May 2, 1991. At the same time, they also filed a motion for the remarking of their exhibits. The trial court granted the motion for remarking. The petitioner, through counsel, subsequently filed its objections to the offer of documentary exhibits which the trial court admitted notwithstanding the objections thereto of petitioner.

On August 8, 1991, private respondent filed his Memorandum. On October 15, 1991, petitioner Maunlad Savings filed a motion to submit the case for decision.

On March 24, 1992, the Nublas filed a Motion to Admit Amended Answer^[9] seeking to introduced the following amendments, (1) the failure to type the name of Ever-Rise as the real obligor in the promissory note; (2) the failure to reflect in the loan documents that the Nublas were mere representatives of Ever-Rise; (3) the absence of any agreement that the Nublas made themselves personally liable for the obligation; and (4) the fact that P477,777.78 of the loan proceeds was not released either to Ever-Rise or the Nublas, but was applied to another account without the conformity of Ever-Rise or the Nublas. In seeking admission of their amended answer, the Nublas cite Section 5, Rule 10 of the Rules of Court which allows the amendment of pleadings to conform to the evidence.

The Nublas likewise filed a Motion for Submission of Plaintiff's (Maunlad Savings) Documents Marked by Defendants (the Nublas) as Their Evidence^[10] after realizing that they failed to include in their Offer of Evidence the Offering Ticket and the Deed of Assignment earlier marked for the defense as Exhibits "1" and "3". Petitioner Maunlad Savings filed its opposition to the twin motions on May 22, 1992.

Both motions were denied by the trial court in an Omnibus Order dated September 18, 1992,^[11] ratiocinating that the proposed amendment in the amended answer will ultimately change or alter the theory of the defense and thus cannot be allowed under Section 3, Rule 10 of the Rules of Court. Furthermore, with respect to the motion for submission of Maunlad Savings' documents marked by the Nublas as their evidence, the trial court held that, under Section 35, Rule 132^[12] of the Rules of Court, the court cannot consider evidence not formally offered. The Nublas sought^[13] reconsideration but the same was denied in a resolution^[14] dated

February 12, 1993.

Petitioner Nubla interposed a petition for *certiorari*, prohibition and *mandamus*^[15] before the Court of Appeals contending that the trial court's denial of his twin motions amounted to grave abuse of discretion. Acting on the petition, the appellate court issued on July 9, 1993 its decision^[16] reversing the challenged Orders, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant petition is hereby GRANTED and the orders dated September 18, 1992 and February 12, 1993 issued by the Regional Trial Court of Binangonan, Rizal, Branch 68 in Civil Case No. 212-B are declared NULL and VOID and set aside. The said Court is directed to: (1) admit the amended answer dated march 24, 1992; and (2) require the respondent to submit the Offering ticket and Deed of Assignment, earlier marked as Exhibits "1" and "3" for remarking as evidence for the defense; and (3) allow the supplemental formal offer of said documents as evidence for the defense.

No costs.

SO ORDERED."

Reconsideration of the above decision having been denied by the appellate court in a Resolution^[17] dated April 4, 1994, petitioner Maunlad Savings interposed the instant petition anchored on the following assignment of errors:^[18]

THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE HIGH PREROGATIVE WRIT OF CERTIORARI

THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE AMENDMENT OF THE PRIVATE RESPONDENT'S ANSWER TO THE COMPLAINT, AFTER HE HAD ALREADY FORMALLY OFFERED HIS EVIDENCE, ALLEGEDLY TO CONFORM TO THE EVIDENCE PRESENTED DURING THE TRIAL, WILL ALTER HIS DEFENSE, MUCH TO THE PREJUDICE OF THE PETITIONER-PLAINTIFF

THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE PRIVATE RESPONDENT SHOULD NOT BE ALLOWED TO REMARK HIS DOCUMENTARY EXHIBITS AFTER HE HAD ALREADY FORMALLY OFFERED THEM IN EVIDENCE

The petition, being devoid of merit, must fail.

Under Sec. 7, Rule 8^[19] of the Rules of Court, 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. Said rule should be read in conjunction with Sec. 9 of Rule 130^[20] of the Revised Rules of Evidence which provides, in substance, that when the parties have reduced their agreement to writing they have made such writing the only repository and memorial of the truth,

and whatever is not found in the writing must be understood to have been waived or abandoned,^[21] unless he puts in issue that there is a mistake or imperfection in the writing, or that it does not express the true agreement of the parties, or that the agreement is invalid or that there is an intrinsic ambiguity in the writing.^[22]

In the instant case, while the specific denial in the original answer was not under oath and thus gave rise to the implied admission of the genuineness and due execution of the contents of the promissory note, private respondent, thru his testimony, was able to put in issue and present parol evidence to controvert the terms of the promissory note, which are essentially the bedrock of his defense. The presentation of the contrariant evidence for and against imputations of genuineness and due execution undoubtedly cured, clarified or expanded, as the case may be, whatever defects in the pleadings or vagueness in the issues there might have been as presented in the original answer.^[23]

The record shows that petitioner Maunlad Savings made no timely objection when private respondent introduced parol evidence to explain the circumstances behind the execution and issuance of the promissory note. The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent.^[24] In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer,^[25] otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.^[26] Thus, the objections of petitioner Maunlad Savings on the hearing of October 12, 1998 and January 23, 1991^[27] amounted to no more than a belated attempt to remedy its neglectful act of prior implied consent to the presentation of parol evidence on the terms of the agreement between the parties.

Hence, the amended answer should have been admitted by trial court, pursuant to Sec. 5, Rule 10, quoted below, which allows amendments to conform to the evidence presented, thus:

Sec. 5. Amendment to conform to or authorize presentation of evidence.

- When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.