

## SECOND DIVISION

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

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

### DECISION

**MENDOZA, J.:**

This petition for review on certiorari seeks a reversal of the decision<sup>[1]</sup> of the Court of Appeals affirming the judgment<sup>[2]</sup> 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.<sup>[3]</sup> In connection with these projects, petitioner entered into two contracts with private respondent Socor Construction Corporation. The first contract (Exh. A),<sup>[4]</sup> dated April 26, 1985, provided:

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

1. SCOPE OF WORK:

- a. The Sub-Contractor agrees to perform and execute the Supply, Lay and Compact Item 310 and Item 302;
- b. That Contractor shall provide the labor and materials needed to complete the project;

- c. 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.
- d. 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;
- e. The construction will commence upon the acceptance of the offer.

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

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

1. SCOPE OF WORK:

- a. 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;
- b. That the Contractor should inform or give notice to the Supplier two (2) days before the delivery of such items;
- c. 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;
- d. 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,<sup>[6]</sup> 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.<sup>[7]</sup>

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.<sup>[8]</sup>

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

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.<sup>[10]</sup>

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.<sup>[11]</sup>

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.<sup>[12]</sup>

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<sup>[13]</sup> of the Rules of Court.

Hence, this appeal. Petitioner contends that --

I. 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.

II. 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.<sup>[14]</sup>

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.* <sup>3</sup>/<sub>4</sub> 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.<sup>[15]</sup>

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

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

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.<sup>[17]</sup>

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."<sup>[18]</sup> 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.<sup>[19]</sup>

**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<sup>[20]</sup> of the Rules of Court which provides:

SEC. 10. *When witness may refer to memorandum.* <sup>3/4</sup> 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