

EIGHTH DIVISION

[CA-G.R. CV No. 100143, November 28, 2014]

**RODZON MARKETING CORPORATION, PLAINTIFF-APPELLEE, VS.
NOEL PONDEVIDA, DEFENDANT-APPELLANT.**

DECISION

LAMPAS PERALTA, J.:

Before the Court is an appeal from the following Decision and Order in Civil Case No. R-PSY-08-08210-CV (For: Collection of sum of money and damages) of Branch 111, Regional Trial Court, Pasay City:

- (1) Decision dated May 30, 2012^[1] which ordered defendant-appellant Noel Pondevida to pay plaintiff-appellee Rodzon Marketing Corporation the sum of Php721,623.85, plus legal interest at the rate of six (6%) percent per annum until fully paid, and
- (2) Order dated January 8, 2013^[2] which denied defendant-appellant's motion for reconsideration of the Decision dated May 30, 2012.

THE ANTECEDENTS

Plaintiff-appellee is a domestic corporation engaged in distribution and sale of assorted consumable products, including the manufacturing, distribution and sale of Ludy's Peanut Butter and Ludy's Coco Jam.^[3] On the other hand, defendant-appellant was a former employee of plaintiff-appellee who started in 1987 as merchandiser. From 1998 until July 15, 2006, defendant-appellant was the Sales Supervisor for Mindanao.^[4]

On October 11, 2006, defendant-appellant filed a complaint for illegal dismissal against plaintiff-appellee with the Regional Arbitration Board, Cagayan De Oro City, docketed as NLRC Case No. RAB 10-11-00675-2006.^[5] In a Decision dated December 20, 2007,^[6] the labor arbiter found defendant-appellant illegally dismissed by plaintiff-appellee when the latter directed the former to turn-over all the company properties in his possession to the Sales Supervisor for the Visayas.

In a Resolution dated December 24, 2008^[7] in NLRC MAC-03-010133-2008, the National Labor Relations Commission (NLRC) affirmed the labor arbiter's finding that defendant-appellee was illegally dismissed, but modified the amount of monetary award. In the same Resolution, the NLRC denied plaintiff-appellee's counterclaim for defendant-appellant's alleged share in the bad debts accounts amounting to Php70,915.78, on the ground that the accounts receivable written off as bad debts

were recognized by the former after the latter's employment was illegally terminated.^[8]

During the pendency of plaintiff-appellee's appeal before the NLRC, or on October 24, 2008, plaintiff-appellee filed with the trial court a *Complaint*^[9] for sum of money against defendant-appellant, alleging that (i) under plaintiff-appellee's *Credit Sales Policies* dated April 5, 1994, defendant-appellant was liable for bad debts accounts equivalent to 5% of the uncollected sales transaction as of June 30, 2007 amounting to Php7,538,893.65 and 12.50% of the uncollected credit sales extended to a new customer amounting to Php2,757,433.35, but the latter failed to pay the same despite repeated demands, and (ii) because of defendant-appellant's disregard of the *Credit Sales Policies* dated April 5, 1994, plaintiff-appellee suffered loss of income equivalent to 10% of Php10,296,277.00, but defendant-appellant failed to pay the same despite repeated demands. Plaintiff-appellee prayed that defendant-appellant be ordered to pay its money claims, exemplary damages, attorney's fees and cost of suit.

On March 11, 2009, defendant-appellant filed his *Answer*,^[10] praying for dismissal of the complaint for the reasons that (i) plaintiff-appellee's representative had no legal personality to sue; (ii) plaintiff-appellee was guilty of forum shopping for deliberately concealing the existence of a labor case between the parties; (iii) the *Credit Sales Policies* dated April 5, 1994 was contrary to law, public policy, anti-labor and iniquitous as plaintiff-appellee may collect twice for there was no provision that bad debts charged to sales personnel would be returned if the same was subsequently collected; (iv) plaintiff-appellee had no cause of action against defendant-appellant as there existed no debtor-creditor relations between them; (v) plaintiff-appellee cannot enforce said office policy to a dismissed employee; (vi) no consent/consideration existed between the parties upon which the obligation may be demanded; (vii) plaintiff-appellee failed to implead the salesmen responsible for the bad debts, the alleged indispensable parties; (viii) even assuming that the *Credit Sales Policies* dated April 5, 1994 was valid and effective, plaintiff-appellee should have first collect from, and exhaust the properties of, the non-paying customers before proceeding against defendant-appellant; (ix) the failure to collect receivables was due to termination of employment of defendant-appellant; and, (x) the complaint was filed as leverage against the labor case filed by defendant-appellant against plaintiff-appellee. As counterclaim, defendant-appellant prayed for moral and exemplary damages and attorney's fees.

On April 29, 2011, before the scheduled pre-trial, defendant-appellant filed a *Motion for Postponement and Apology*.^[11] During the scheduled pre-trial on May 3, 2011, the trial court issued an Order^[12] denying said motion for failure of defendant-appellant's counsel to comply with the three-day notice rule. In the same Order, the trial court allowed plaintiff-appellee to present its evidence *ex-parte*.

On June 17, 2011, defendant-appellant filed a *Motion for Reconsideration*^[13] of the Order dated May 3, 2011, but the same was denied by the trial court in an Order dated June 21, 2011.^[14]

During the *ex-parte* presentation of its evidence, plaintiff-appellee presented (i) Eleanor Timajo, former Head of plaintiff-appellee's Credit and Collection

Department;^[15] (ii) Jun Lalo, former OIC and Head of plaintiff-appellee's Audit Department;^[16] (iii) Salvacion Elesterio, plaintiff-appellee's Warehouse Supervisor;^[17] and, (iv) Myrna Carsolin, plaintiff-appellant's representative and Legal and Administrative Assistant.^[18]

In a Decision dated May 30, 2012, the trial court held defendant-appellant liable to plaintiff-appellee under the *Credit Sales Policies*, but the claims for attorney's fees, exemplary damages and loss of income were denied for failure of plaintiff-appellee to present evidence to substantiate the same. Thus:

"**WHEREFORE**, judgment is rendered in favor of the plaintiff. Accordingly, defendant is ordered to pay the plaintiff the sum of **SEVEN HUNDRED TWENTY ONE THOUSAND SIX HUNDRED TWENTY THREE and 85/100 PESOS** (Php721,623.85) plus legal interest at the rate of six percent (6%) per annum until fully paid.

SO ORDERED."^[19]

Defendant-appellant filed a *Motion for Reconsideration*,^[20] but the same was denied by the trial court in an Order dated January 8, 2013.

Thereupon, defendant-appellant filed this appeal^[21] which is premised on the following assignment of errors:

- 1) THE LOWER COURT HAS ERRED IN HOLDING THAT THE "SALES CREDIT POLICY" IS A CONTRACT WHICH HAS THE FORCE AND EFFECT OF LAW BETWEEN THE CONTRACTING PARTIES;
- 2) THE LOWER COURT HAS ERRED IN NOT DISMISSING THE CASE, - - ASSUMING THAT THE "SALES CREDIT POLICY" IS A CONTRACT - -, FOR LACK OF JURISDICTION, AS THE LABOR ARBITRATION BOARD/NATIONAL LABOR RELATIONS COMMISSION HAS THE EXCLUSIVE AND ORIGINAL JURISDICTION FOR ALL EMPLOYMENT CONTRACTS PURSUANT TO ARTICLES 217 AND 218 OF THE LABOR CODE OF THE PHILIPPINES;
- 3) THAT LOWER COURT HAS ERRED IN NOT DISMISSING THE CASE ON THE GROUND OF FORUM SHOPPING/OR PRECLUSION OF JUDGMENT;
- 4) THE LOWER COURT DELIBERATELY IGNORED THE FACT THE "SALES CREDIT POLICY" IS NULL AND VOID, FOR BEING CONTRARY TO MORALS, PUBLIC POLICY, INIQUITOUS AND PATENTLY UNJUST, EVEN ASSUMING THAT IT IS A CONTRACT;
- 5) THE LOWER COURT FAILED TO APPRECIATE THAT THERE WAS FAILURE TO IMPLEAD INDISPENSABLE PARTIES;
- 6) THE EVIDENCE AGAINST DEFENDANT-APPELLANT IS INSUFFICIENT TO WARRANT A FAVORABLE DECISION.^[22]

THE ISSUE

Whether the trial court erred in finding that defendant-appellant is liable to plaintiff-appellee under the latter's *Credit Sales Policies*.

THE COURT'S RULING

In holding defendant-appellant liable to plaintiff-appellee for his share in the latter's bad debts, the trial court noted that plaintiff-appellee was able to prove by preponderance of evidence the existence of *Sales Credit Policies*, defendant-appellant extended credits to customers in the amount of Php10,296,327.00 which remained uncollected, and defendant-appellant failed to refute his liabilities for failure of his counsel to appear during pre-trial despite due notice. Thus:

"By preponderance of evidence, plaintiff was able to establish the fact that Pondevida extended credits to customers in the total amount of Php10,296,327.00, which remained uncollected. Under the Sales and Credit Policy, Php721,623.85 shall be the proportionate share of Pondevida.

Unfortunately, defendant failed to refute his liabilities due to his counsel's failure to appear for pre-trial despite notice.

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

As shown by the demand letter presented by the plaintiff, the total amount claim was Php10,296,277.00, which represents the total uncollected amount in the Mindanao area, over which, Pondevida was the sales supervisor.

Under the Sales and Credit Policy, the sales on credit which remained uncollected, in full or in part, shall be considered as bad debts and will be shared by the corporation and the sales personnel on a 60/40 sharing. On the 40% charge to the sales personnel, the supervisor will be liable and will be charge 5% of the said uncollected amount.

As further agreed upon, when sales personnel extends credit limit to customers **without** the approval of the corporation, and the credit remains uncollected, the **whole amount** shall be shouldered by the sales personnel in such area, out of which, 12.5% will be charged against and collected from the supervisor.

Under the agreed policy, the total amount of Pondevida's obligation is

Php721,623.85 and not Php10,296,277.00 as claimed by plaintiff's corporation in the demand letter."^[23]

Defendant-appellant faults the trial court in so ruling. Allegedly, (i) the *Credit Sales Policies* "is not a contract at all but just an office 'policy' dictated solely by plaintiff-appellee that governs the norms of conduct, office and functions of the employees/salesmen of plaintiff-appellee;"^[24] (ii) exclusive and original jurisdiction is with the labor arbiter/National Labor Relations Commission as "the causes of action are founded of (*sic*) the terms and conditions of employment, and therefore, an 'employment contract'"^[25] and "in fact, the issues raised in the complaint were merely a rehash of the issues raised by plaintiff-appellee x x x of (*sic*) that labor case filed by defendant-appellant against plaintiff-appellee;"^[26] (iii) the filing of the complaint for sum of money "amounts to forum-shopping or barred by a prior judgment, if not, amounts to multiplicity of suits"^[27] as plaintiff-appellee "deliberately concealed x x x in its Verification and Certification of Non-Forum Shopping"^[28] "the existence of that Labor Case involving the same parties;"^[29] (iv) "plaintiff should have included its field personnel who negotiated for these transactions and the clients, precisely because they are the principal parties to these transactions/contracts, for without them, the transactions would not be materialized;"^[30] (v) "the lower court deliberately ignored the fact that the 'Sales and Credit Policy' is null and void, for being contrary to morals, public policy, iniquitous and patently unjust;"^[31] and, (vi) "the evidence thus adduced is insufficient to warrant a favorable verdict"^[32] in favor of plaintiff-appellee and "the fact x x x that defendant did not cross-examine the witnesses is of no moment [,] for the rule still remains that the burden of proof still rests on the plaintiff to prove its affirmative allegations by competent and convincing evidence."^[33]

The petition has merit.

It is a basic rule that in civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence.^[34] It has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence.^[35] It is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.^[36]

Under Section 1, Rule 133, Revised Rules of Evidence, the following is to be considered in determining preponderance of evidence:

"x x x In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of