

## SECOND DIVISION

[ G.R. No. 150731, September 14, 2007 ]

**CASENT REALTY DEVELOPMENT CORP., PETITIONER, VS.  
PHILBANKING CORPORATION, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

On appeal to this Court through Rule 45 of the Rules of Court is the March 29, 2001 Decision<sup>[1]</sup> and November 7, 2001 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 63979 entitled *Philbanking Corporation v. Casent Realty Development Corporation*. The CA reversed the May 12, 1999 Order<sup>[3]</sup> of the Makati City Regional Trial Court (RTC), Branch 145 in Civil Case No. 93-2612, which granted petitioner's demurrer to evidence and dismissed the complaint filed by respondent.

#### The Facts

The facts according to the appellate court are as follows:

In 1984, petitioner Casent Realty Development Corporation executed two promissory notes in favor of Rare Realty Corporation (Rare Realty) involving the amounts of PhP 300,000 (PN No. 84-04) and PhP 681,500 (PN No. 84-05). It was agreed in PN No. 84-04 that the loan it covered would earn an interest of 36% per annum and a penalty of 12% in case of non-payment by June 27, 1985, while the loan covered by PN No. 84-05 would earn an interest of 18% per annum and 12% penalty if not paid by June 25, 1985.<sup>[4]</sup> On August 8, 1986, these promissory notes were assigned to respondent Philbanking Corporation through a Deed of Assignment.<sup>[5]</sup>

Respondent alleged that despite demands, petitioner failed to pay the promissory notes upon maturity such that its obligation already amounted to PhP 5,673,303.90 as of July 15, 1993. Respondent filed on July 20, 1993 a complaint before the Makati City RTC for the collection of said amount. In its Answer,<sup>[6]</sup> petitioner raised the following as special/affirmative defenses:

1. The complaint stated no cause of action or if there was any, the same was barred by estoppel, statute of frauds, statute of limitations, laches, prescription, payment, and/or release;
2. On August 27, 1986, the parties executed a *Dacion en Pago*<sup>[7]</sup> (*Dacion*) which ceded and conveyed petitioner's property in Iloilo City to respondent, with the intention of totally extinguishing petitioner's outstanding accounts with respondent. Petitioner presented a Confirmation Statement<sup>[8]</sup> dated April 3, 1989 issued by respondent stating that petitioner had no loans with the bank as of December 31,

1988.

3. Petitioner complied with the condition in the *Dacion* regarding the repurchase of the property since the obligation was fully paid. Respondent sent confirmation statements in the latter months of 1989, which showed that petitioner had no more outstanding loan; and

4. Assuming that petitioner still owed respondent, the latter was already estopped since in October 1988, it reduced its authorized capital stock by 50% to wipe out a deficit of PhP 41,265,325.12.<sup>[9]</sup>

Thus, petitioner, by way of compulsory counterclaim, alleged that it made an overpayment of approximately PhP 4 million inclusive of interest based on Central Bank Reference Lending Rates on dates of overpayment. Petitioner further claimed moral and exemplary damages and attorney's fee, amounting to PhP 4.5 million plus the costs of suit as a consequence of respondent's insistence on collecting.<sup>[10]</sup>

The parties failed to reach an amicable settlement during the pre-trial conference. Thereafter, respondent presented its evidence and formally offered its exhibits. Petitioner then filed a Motion for Judgment on Demurrer to the Evidence,<sup>[11]</sup> pointing out that the plaintiff's failure to file a Reply to the Answer which raised the *Dacion* and Confirmation Statement constituted an admission of the genuineness and execution of said documents; and that since the *Dacion* obliterated petitioner's obligation covered by the promissory notes, the bank had no right to collect anymore.

Respondent subsequently filed an Opposition<sup>[12]</sup> which alleged that: (1) the grounds relied upon by petitioner in its demurrer involved its defense and not insufficiency of evidence; (2) the *Dacion* and Confirmation Statement had yet to be offered in evidence and evaluated; and (3) since respondent failed to file a Reply, then all the new matters alleged in the Answer were deemed controverted.<sup>[13]</sup>

The trial court ruled in favor of petitioner and dismissed the complaint through the May 12, 1999 Order, the dispositive portion of which reads:

**WHEREFORE**, premises considered[,], finding defendant's Motion For Judgment On Demurrer To The Evidence to be meritorious[,], the same is hereby **GRANTED**. Consequently, considering that the obligation of the defendant to the plaintiff having been extinguish[ed] by a *Dacion en Pago* duly executed by said parties, the instant complaint is hereby **DISMISSED**, with prejudice. Without Cost.<sup>[14]</sup>

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

On appeal, respondent alleged that the trial court gravely erred because the promissory notes were not covered by the *Dacion*, and that respondent was able to prove its causes of action and right to relief by overwhelming preponderance of evidence. It explained that at the time of execution of the *Dacion*, the subject of the promissory notes was the indebtedness of petitioner to Rare Realty and not to the "Bank"--the party to the *Dacion*. It was only in 1989 after Rare Realty defaulted in its obligation to respondent when the latter enforced the security provided under

the Deed of Assignment by trying to collect from petitioner, because it was only then that petitioner became directly liable to respondent. It was also for this reason that the April 3, 1989 Confirmation Statement stated that petitioner had no obligations to respondent as of December 31, 1988. On the other hand, petitioner claimed that the Deed of Assignment provided that Rare Realty lost its rights, title, and interest to directly proceed against petitioner on the promissory notes since these were transferred to respondent. Petitioner reiterated that the *Dacion* covered all conceivable amounts including the promissory notes.<sup>[15]</sup>

The appellate court ruled that under the Rules of Civil Procedure, the only issue to be resolved in a demurrer is whether the plaintiff has shown any right to relief under the facts presented and the law. Thus, it held that the trial court erred when it considered the Answer which alleged the *Dacion*, and that its genuineness and due execution were not at issue. It added that the court *a quo* should have resolved whether the two promissory notes were covered by the *Dacion*, and that since petitioner's demurrer was granted, it had already lost its right to present its evidence.<sup>[16]</sup>

The CA found that under the Deed of Assignment, respondent clearly had the right to proceed against the promissory notes assigned by Rare Realty. Thus, the CA ruled, as follows:

**WHEREFORE**, premises considered, the Order dated May 12, 1999 of the Regional Trial Court, National Capital Judicial Region, Branch 145, Makati City is hereby **REVERSED** and **SET ASIDE**.

Judgment is hereby entered **ORDERING** [petitioner] Casent Realty [Development] Corporation to:

1. pay [respondent] Philbanking Corporation the amount of P300,000.00 with an interest of 36% per annum and a penalty of 12% for failure to pay the same on its maturity date, June 27, 1985 as stipulated in Promissory Note No. 84-04;
2. pay [respondent] Philbanking Corporation the amount of P681,500.00 with an interest of 18% per annum and a penalty of 12% for failure to pay the same on its maturity date, June 25, 1985 as stipulated in Promissory Note No. 84-05; and
3. pay [respondent] Philbanking Corporation, the amount representing 25% of total amount due as attorney's fee as stipulated in the promissory notes.

SO ORDERED.<sup>[17]</sup>

Petitioner filed a Motion for Reconsideration<sup>[18]</sup> which was denied by the CA in its November 7, 2001 Resolution.<sup>[19]</sup>

### **The Issues**

WHETHER OR NOT THE COURT OF APPEALS ERRED IN EXCLUDING THE PETITIONER'S AFFIRMATIVE DEFENSES IN ITS ANSWER IN RESOLVING A

## DEMURRER TO EVIDENCE; AND

## WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE RESPONDENT

In other words, the questions posed by this case are:

1. Does respondent's failure to file a Reply and deny the *Dacion* and Confirmation Statement under oath constitute a judicial admission of the genuineness and due execution of these documents?
2. Should judicial admissions be considered in resolving a demurrer to evidence? If yes, are the judicial admissions in this case sufficient to warrant the dismissal of the complaint?

Petitioner asserts that its obligation to pay under the promissory notes was already extinguished as evidenced by the *Dacion* and Confirmation Statement. Petitioner submits that when it presented these documents in its Answer, respondent should have denied the same under oath. Since respondent failed to file a Reply, the genuineness and due execution of said documents were deemed admitted, thus also admitting that the loan was already paid. On the other hand, respondent states that while it failed to file a Reply, all the new matters were deemed controverted pursuant to Section 10, Rule 6 of the Rules of Court. Also, the loan which was covered by the *Dacion* refers to another loan of petitioner amounting to PhP 3,921,750 which was obtained directly from the respondent as of August 1986.<sup>[20]</sup> Furthermore, petitioner argued that assuming respondent admitted the genuineness and due execution of the *Dacion* and Confirmation Statement, said admission was not all-encompassing as to include the allegations and defenses pleaded in petitioner's Answer.

### The Court's Ruling

The petition is partly meritorious.

Rule 33, Section 1 of the 1997 Rules of Civil Procedure provides:

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.

In *Gutib v. Court of Appeals*, we defined a demurrer to evidence as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue."<sup>[21]</sup>

What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief **based on the facts and the law**. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue.<sup>[22]</sup> However, the plaintiff's evidence should not be the only basis in resolving a demurrer to