

## SECOND DIVISION

[ G.R. No. 204264, June 29, 2016 ]

**JENNEFER FIGUERA, AS SUBSTITUTED BY ENHANCE VISA SERVICES, INC., REPRESENTED BY MA. EDEN R. DUMONT, PETITIONER, VS. MARIA REMEDIOS ANG, RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioner Jennefer Figuera<sup>[2]</sup> (*Figuera*) assailing the **June 29, 2012** decision<sup>[3]</sup> and the **September 28, 2012** resolution<sup>[4]</sup> of the Court of Appeals (CA) of Cebu City in CA-G.R. CV. No. 02480.

#### The Facts

Maria Remedios Ang (*Ang*) is the registered owner of a single proprietorship business named "Enhance Immigration and Documentation Consultants" (EIDC).

On December 16, 2004, Ang executed a "Deed of Assignment of Business Rights" (*Deed*) transferring all of her business rights over the EIDC to Figuera for One Hundred Fifty Thousand Pesos (P150,000.00).

In addition to the assignment of rights, the parties also agreed that Ang shall pay the bills for electricity, telephone, office rentals, and the employees' salaries up to the month of December 2004.<sup>[5]</sup>

Without Ang's consent, Figuera paid all the utility bills amounting to P107,903.21 as of December 2004. On January 17, 2005, Figuera tendered only the amount of P42,096.79 to Ang, after deducting the amount paid for the utility bills from the P150,000.00 consideration of the Deed.

Ang refused to accept Figuera's payment. Figuera mailed the Formal Tender of Payment and gave Ang five (5) days to accept the amount. Despite the lapse of the 5-day period, however, Ang still refused to accept the payment.

Thus, Figuera filed a **complaint** for specific performance before the Regional Trial Court (RTC), Branch 9 of Cebu City against Ang. Figuera consigned the amount of P42,096.79 to the RTC.

In her answer, Ang maintained that the amount due pursuant to the Deed is P150,000.00 and not just P42,096.79. She argued that she cannot be compelled to accept the amount because it is not what was agreed upon.

On May 19, 2005, Figuera conveyed all her rights, assets, interests, liabilities, and

causes of action over EIDC in favor of the Enhance Visa Services, Inc. (EVSI) through a "Deed of Assignment Coupled with Interest." Thus, on June 14, 2005, EVSI substituted Figuera, on motion, as plaintiff.

### ***The RTC Ruling***

The RTC ruled in Ang's favor in its decision dated December 28, 2007.

The RTC held that the unambiguous language of the Deed mandates Ang, as the Assignor, to pay the December 2004 utility bills. Figuera, however, paid the utility bills without Ang's consent.

The RTC explained that for the tender of payment and consignment to be valid, Figuera must tender the full amount of P150,000.00 rather than just P42,096.79. Ang is not obliged to accept an amount less than what is agreed upon in the Deed.

Figuera appealed the RTC decision to the CA and argued that by operation of law, legal subrogation and compensation had taken place. Consequently, Figuera's obligation to the extent of the amount of P107,903.21 is extinguished.

### ***The CA Ruling***

In its June 29, 2012 decision, the CA affirmed the RTC's ruling.

The CA held that there is nothing in the Deed that grants Figuera the option to pay the utility bills and to deduct the payment from the agreed consideration in the Deed; thus, the amount of P150,000.00 remains as the due consideration from Figuera. Moreover, Figuera failed to prove that Ang consented to the payment of the bills.

The CA added that Figuera's payment of P42,096.79 cannot be considered as a valid tender of payment or a valid consignment because it is insufficient to cover the consideration due to Ang.

As for the other issues and arguments which Figuera failed to raise before the RTC, the CA held that these issues cannot be raised for the first time on appeal.

Figuera sought reconsideration of the CA's decision which the CA denied for lack of merit in its September 28, 2012 resolution.

### **The Parties' Arguments**

In the present petition for review, Figuera challenges the CA's decision and resolution affirming the RTC ruling.

Figuera argues that the CA committed errors of law based on the following grounds: *First*, Figuera was eager to pay the utility bills being the EIDC's new owner.

*Second*, Figuera had been subrogated to the rights of Ang's creditor's (*i.e.*, the Telephone Company, electric company, office space lessor, and company employees) upon payment of the utility bills even if the payment was made without Ang's knowledge. Consequently, Ang became Figuera's debtor.

*Third*, Figuera and Ang became debtors and creditors of one another for a sum of money that is liquidated, due, demandable, and without controversy.

*Fourth*, Figuera and Ang's obligations amounting to P107,903.21 were compensated against each other by operation of law.

*Fifth*, Figuera's tender of the amount of P42,096.79 to Ang is a valid tender of payment.

*Sixth*, Figuera validly consigned the amount of P42,096.79.

*Finally*, Figuera presented the foregoing issues before the RTC and did not raise them for the first time on appeal.

In her comment,<sup>[6]</sup> Ang argued that: *first*, a petition for review under Rule 45 of the Rules of Court only allows questions of law. Figuera's contention that legal subrogation and compensation took place requires proof that should have been established during the trial.

*Second*, Figuera admitted that the RTC was correct in ruling that there was nothing in the Deed that grants her the option to pay the utilities nor allows any deduction from the agreed consideration upon her payment of the utility bills.

*Third*, legal subrogation cannot take place because the situation of the parties under the Deed is not among the instances provided by law for subrogation to take place.

*Fourth* and last, Figuera should not be allowed to raise issues regarding legal subrogation and compensation because these were raised for the first time on appeal.

### **The Issue**

The main issue to be resolved in this case is whether or not there was a valid tender of payment and consignment.

### **Our Ruling**

**We grant the petition and reverse the CA's ruling.**

***The questions raised in this petition are one of law which the Court can properly review.***

It is a settled rule that the Court cannot review questions of fact on a petition for review under Rule 45 of the Rules of Court. A question of fact exists when the truth or falsity of the parties' factual allegations is in dispute. A question of law, on the other hand, exists when the application of the law on the stated facts is in controversy.<sup>[7]</sup>

The parties' description of the questions raised does not determine whether these questions are of fact or of law. The true test is whether the appellate court can

resolve the issue without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.<sup>[8]</sup>

Contrary to Ang's allegation, the question involved in the present case is a question of law which the Court can properly pass upon. There is no dispute regarding the existence of the Deed and its consideration, and the provision that mandates Ang to pay the EIDC's bills until December 2004. Ang also did not refute Figuera's payment amounting to P107,903.21 to Ang's creditors and Figuera's tender of payment to Ang amounting to P42,096.79.

The CA can assess Figuera's contention that legal subrogation and compensation had taken place even without requiring Figuera to present further evidence. The issue on the validity, of Figuera's tender of payment and consignation can be resolved through the application of the relevant laws.

***The Court may properly address the questions raised even though they are raised for the first time on appeal.***

Ang contends that the CA correctly dismissed Figuera's argument that her debt amounting to P107,903.21 is extinguished through legal subrogation and compensation. Figuera's argument, Ang insists, was not raised before the trial court and cannot be raised for the first time on appeal.

**We disagree.** The Court grants to consider and resolve the issues on the application of legal subrogation and compensation, even though it was raised for the first time on appeal.

As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.<sup>[9]</sup>

In the interest of justice, however, the Court may consider and resolve issues not raised before the trial court if it is necessary for the complete adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.<sup>[10]</sup>

Thus, an appellate court is clothed with authority to review rulings even if they are not assigned as errors in the appeal in the following instances:

- (a) grounds not assigned as errors but affecting jurisdiction over the subject matter;
- (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
- (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;
- (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (e) matters not assigned as errors on appeal but closely related to an error