

FIRST DIVISION

[G.R. No. 185590, December 03, 2014]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
LEY CONSTRUCTION AND DEVELOPMENT CORPORATION AND
SPOUSES MANUEL LEY AND JANET LEY, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the reversal of the Court of Appeals' Decision^[1] dated September 4, 2008 in CA-G.R. CV No. 75590 dismissing the appeal of petitioner Metropolitan Bank and Trust Company assailing the dismissal of its complaint by the Regional Trial Court (RTC) of Makati City, Branch 56, and the Resolution^[2] dated December 5, 2008 denying the Bank's motion for reconsideration.

The Court of Appeals adopted the following recital of facts in the Decision^[3] dated July 3, 2001 of the RTC in Civil Case No. 91-1878:

This is an action for recovery of a sum of money and damages with a prayer for the issuance of writ of preliminary attachment filed by the plaintiff Philippine Banking Corporation^[4] against the defendants, namely: Ley Construction and Development Corporation (hereafter "LCDC") and Spouses Manuel and Janet C. Ley (hereafter "[defendant]-spouses").

The complaint alleges that: Defendant LCDC, a general contracting firm, through the oral representations of defendant-spouses, applied with plaintiff, a commercial bank, for the opening of a Letter of Credit. Plaintiff issued, on April 26, 1990, Letter of Credit DC 90[-]303-C in favor of the supplier-beneficiary Global Enterprises Limited, in the amount of Eight Hundred Two Thousand Five Hundred U.S. Dollars (USD 802,500.00). The letter of credit covered the importation by defendant LCDC of Fifteen Thousand (15,000) metric tons of Iraqi cement from Iraq. Defendant applied for and filed with plaintiff two (2) Applications for Amendment of Letter of Credit on May 3, 1990 and May 11, 1990, respectively.

Thereafter, the supplier-beneficiary Global Enterprises, Inc. negotiated its Letter of Credit with the negotiating bank Credit Suisse of Zurich, Switzerland. Credit Suisse then sent a reimbursement claim by telex to American Express Bank Ltd., New York on July 25, 1990 for the amount of Seven Hundred Sixty[-]Six Thousand Seven Hundred Eight U.S. Dollars (USD 766,708.00) with a certification that all terms and conditions of the credit were complied with. Accordingly, on July 30,

1990, American Express Bank debited plaintiff's account Seven Hundred Seventy Thousand Six Hundred Ninety[-]One U.S. Dollars and Thirty Cents (USD 770,691.30) and credited Credit Suisse Zurich Account with American Express Bank, Ltd., New York for the negotiation of Letter of Credit. On August 6, 1990, plaintiff received from Credit Suisse the necessary shipping documents pertaining to Letter of Credit DC 90-303-C that were in turn delivered to the defendant. Upon receipt of the aforesaid documents, defendants executed a trust receipt. However, the cement that was to be imported through the opening of the subject Letter of Credit never arrived in the Philippines.

The prompt payment of the obligation of the defendant LCDC was guaranteed by [defendant]-spouses under the Continuing Surety Agreement executed by the latter in favor of the defendant.

The obligation covered by the subject Letter of Credit in the amount of USD 802,500.00 has long been overdue and unpaid, notwithstanding repeated demands for payment thereof. Plaintiff, therefore, instituted the instant complaint for recovery of the following amounts: Twenty[-]Three [M]illion Two Hundred [F]ifty[-]Nine Thousand One Hundred Twenty[-]Four Pesos and Fourteen Centavos (PHP23,259,124.14) as of June 15, 1991, inclusive of interest and penalty, plus additional interest thereon of Thirty percent (30%) per annum; attorney's fees equivalent to Twenty[-]Five percent [25%] of the total obligation; and costs of suit.

In support of its cause of action against defendant, plaintiff presented the testimony of Mr. Fenelito Cabrera, Head of the Foreign Department of plaintiff's Head Office. (T.S.N. dated June 16, 1995, p. 4) There being no other witness to be presented by the plaintiff (Order dated June 27, 1997), the plaintiff filed its formal offer of exhibits dated July 18, 1997 to which defendant filed its comments/objections to formal offer of evidence dated February 23, 1998. In an order dated March 4, 1998, Exhibits "A" to "N" to "N-4" including [their] sub-markings were admitted for the purposes they were respectively offered. However, on defendants' motion for reconsideration dated [March 30,] 1998 that was duly opposed by the plaintiff in its opposition dated June 3, 1998, this Court partially granted defendants' motion for reconsideration. Consequently, Exhibits "D", "E", "H", "I", "J", "K", "L", and "M" and their sub-markings were not admitted for not being properly identified and authenticated by a competent witness. Only Exhibits "A", "B", "C", "C-1", and "N", "N-1" to "N-4" remain admitted in evidence. (Order dated September 9, 1998)

Defendant filed a motion to dismiss by way of demurrer to evidence on the ground that plaintiff's witness Mr. Fenelito Cabrera was incompetent to testify with respect to the transaction between the plaintiff and the defendant and that the plaintiff's documentary exhibits were not properly identified and authenticated.^[5]

The trial court found that the Bank's only witness, Fenelito Cabrera, was incompetent to testify on the documents presented by the Bank during the trial. Cabrera was with the Bank's Dasmariñas Branch and not with the Head Office from

March 1990 to June 1991, the period the transaction covered by the documents took place. Thus, he could not have properly identified and authenticated the Bank's documentary exhibits. His lack of competence was even admitted by the Bank's counsel who did not even ask Cabrera to identify the documents. As the documents were not identified and duly authenticated, the Bank's evidence was not preponderant enough to establish its right to recover from LCDC and the spouses Ley.^[6]

The trial court further ruled that only the following documents remained admitted in evidence:

Exhibit	Document
"A"	Continuing Surety Agreement dated July 25, 1989
"B"	Application and Agreement for Commercial Letter of Credit
"C" and "C-1"	Letter of Credit No. DC 90-303-C
"N" and "N-1" to "N-4"	Statement of Outstanding Obligations

For the trial court, these were insufficient to show that LCDC and the spouses Ley were responsible for the improper negotiation of the letter of credit. Thus, the trial court concluded in its Decision dated July 3, 2001 that the Bank failed to establish its cause of action and to make a sufficient or preponderant case.^[7] The dispositive portion of the decision reads:

WHEREFORE, the demurrer to evidence is granted. The case is dismissed.^[8]

The Bank appealed to the Court of Appeals. It claimed that the trial court erred in granting the demurrer to evidence of LCDC and the spouses Ley on the ground that the Bank failed to establish its cause of action. The Bank insisted that, even without considering the exhibits excluded in evidence by the trial court, the Bank was able to prove by preponderant evidence that it had a right and that right was violated by LCDC and the spouses Ley. It explained that the trial court was wrong in considering only Exhibits "A," "B," "C," "C-1," "N" and "N-1" to "N-4" as the following documents were also admitted in evidence and should have been considered in the resolution of the demurrer to evidence.^[9]

Exhibit	Document
"F"	Register Copy or Memorandum on the Letter of Credit
"G"	Trust Receipt No. TRI432/90 dated August 16, 1990
"G-1"	Bank Draft
"G-2"	Bill of Exchange

The Bank asserted that the consideration of Exhibits "F," "G" and "G-1" to "G-2" would have established the following:

- (a) On August 16, 1990, LCDC and the spouses Ley received from the Bank the necessary shipping documents relative to the Letter of Credit evidencing title to the goods subject matter of the importation which the Bank had previously received from Credit Suisse;
- (b) Upon receipt of the shipping documents, LCDC and the spouses Ley executed a trust receipt, Trust Receipt No. TRI432/90, in favor of the Bank covering the importation of cement under Letter of Credit No. DC 90-303-C;
- (c) The issuance of the trust receipt was an acknowledgement by LCDC and the spouses Ley of their receipt of the shipping documents and of their liability to the Bank;
- (d) By signing the trust receipt, constituted an admission by LCDC and the spouses Ley that the Letter of Credit was in order, including the Bank's payment of the amount of US\$766,708.00 under the Letter of Credit.^[10]

Thus, even with only the testimony of Cabrera and Exhibits "A," "B," "C," "C-1," "N" and "N-1" to "N-4" and "F," "G" and "G-1" to "G-2," the demurrer should have been denied and LCDC and the spouses Ley held liable to the Bank.

Moreover, the Bank contended that its Exhibits "D," "E," "H," and "I" should have been also admitted in evidence because LCDC and the spouses Ley effectively admitted the authenticity of the said documents when they stated in the pre-trial brief which they submitted during the pre-trial of the case at the trial court:

III. DOCUMENTARY EXHIBITS

Defendants shall adopt the documents submitted by plaintiff and marked as Annexes "A," "B," "C," "D," "E," "E-1," "F," "G," "G-1," "H" and "H-1" in the plaintiff's complaint.

Defendants reserve the right to mark or adopt such other documentary evidence as may be discovered or warranted to support its claim in the course of the trial. x x x.^[11]

The Court of Appeals found no merit in the Bank's appeal. It observed that Cabrera, the Bank's only witness, prepared and properly identified Exhibits "F," "G," "N" and "N-1" to "N-4" only. The Bank's counsel even admitted in open court during Cabrera's direct examination that Cabrera was incompetent to testify on the rest of the Exhibits. The trial court was therefore correct in not giving any evidentiary weight to those Exhibits not properly identified by Cabrera.^[12]

For the Court of Appeals, the statement in the pre-trial brief that LCDC and the spouses Ley "shall adopt" Annexes "A," "B," "C," "D," "E," "E-1," "F," "G," "G-1," "H" and "H-1" of the Bank's complaint did not constitute an admission of the said documents by LCDC and the spouses Ley. However, the appellate court noted that LCDC and the spouses Ley admitted the existence and authenticity of the Bank's Exhibits "A," "B," "C," "C-1," and "G."^[13]

Nevertheless, the Court of Appeals ruled that the following Exhibits of the Bank were admitted in evidence:

Exhibit	Document
"A"	Continuing Surety Agreement dated July 25, 1989
"B"	Application and Agreement for Commercial Letter of Credit
"C" and "C-1"	Letter of Credit No. DC 90-303-C
"F"	Register Copy or Memorandum on the Letter of Credit
"G"	Trust Receipt No. TRI432/90 dated August 16, 1990
"N" and "N-1" to "N-4"	Statement of Outstanding Obligations

Even upon inclusion and consideration of the above-mentioned exhibits, the Court of Appeals held that the Bank still failed to show that LCDC and the spouses Ley were directly responsible for the improper negotiation of the letter of credit. Thus, the Court of Appeals, in its Decision dated September 4, 2008, dismissed the appeal and affirmed the decision of the trial court.^[14] The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** and the assailed decision of the RTC, National Capital Judicial Region, Branch 56, Makati City in Civil Case No. 91-1878 is **AFFIRMED**.^[15]

The Court of Appeals denied the Bank's motion for reconsideration, prompting the Bank to file this petition.

The Bank insists that it has been able to establish its cause of action not only through preponderance of evidence but even by the admissions of LCDC and the spouses Ley. It maintains that its cause of action is not predicated on the improper negotiation of the letter of credit but on the breach of the terms and conditions of the trust receipt.^[16]

The petition fails.