432 Phil. 1052

SECOND DIVISION

[G.R. No. 147758, June 26, 2002]

SPOUSES ARSENIO R. REYES AND NIEVES S. REYES, PETITIONERS, VS. COURT OF APPEALS AND PABLO V. REYES, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals promulgated on 14 July 2000 in CA-G.R. CV No. 51437 and its Resolution[2] of 2 April 2001 denying reconsideration.

This petition arose from a civil case for collection of a sum of money with preliminary attachment filed by respondent Pablo V. Reyes against his first cousin petitioner Arsenio R. Reyes and spouse Nieves S. Reyes. According to private respondent, petitioner-spouses borrowed from him P600,000.00 with interest at five percent (5%) per month, which totalled P1,726,250.00 at the time of filing of the Complaint. The loan was to be used supposedly to buy a lot in Parañaque. It was evidenced by an acknowledgment receipt[3] dated 15 July 1990 signed by the petitioner-spouses Arsenio R. Reyes and Nieves S. Reyes and witness Romeo Rueda, which read:

> This is to acknowledge receipt (of) the sum of Five hundred thousand pesos (P500,000.00) from (?) broken down as follows:
>
> 3/16/90 -- P300,000.00 *7/19/90 chk.168514*
> 7/14/90 -- P200,000.00 + *P100,000*
>
> Total amt. P500,000.00, with corresponding interest at five percent per month (5%) due and payable every 15th day of the month for a period of six months.

Petitioners paid the interests on the loan with the following BPI Family Bank checks[4] drawn against their personal account:

Check No. 147749	16 April 1990	P 15,000.00
Check No. 147827	17 May 1990	P 9,000.00
Check No. 147877	15 June 1990	P 9,000.00
Check No. 147862	13 July 1990	P 15,000.00
Check No. 159586	3 May 1991	P

	36,000.00
TOTAL	P 84,000.00

Petitioners also turned over to private respondent their Nissan pickup truck worth P400,000.00 in partial payment of the loan, and on 30 January 1993 petitioner Arsenio executed a deed of absolute sale[5] over the vehicle in favor of respondent. Respondent's wife Araceli Reyes issued an acknowledgment receipt[6] therefor. Subsequently, petitioners failed to make any further payments despite written demand for payment on 24 August 1993.[7]

In their Answer petitioners admitted their loan from respondent but averred that there was a novation so that the amount loaned was actually converted into respondent's contribution to a partnership formed between them on 23 March 1990.[8] According to petitioner Nieves, sometime in 1989 respondent Pablo went to their house and proposed to petitioner Arsenio the formation of a partnership to develop the property petitioners planned to buy. He agreed and on 23 March 1990 they executed their Articles of Partnership of *Feliz Casa Realty Development, Ltd.* Each partner was to contribute a capital of P2,000,000.00. Arsenio's contribution was his P1,000,000.00 investment with the owner of the real property to be purchased. Respondent Pablo contributed only P500,000.00.[9]

While the partnership existed, respondent received a total amount of P84,000.00 in BPI Family Bank checks as advances from the partnership funds.[10] In October 1990 respondent wanted to withdraw from the partnership and asked for the return of his investment. Petitioners agreed to convert his contribution into a non-interest-bearing loan of petitioners. In view of the conversion, the advances to respondent through the BPI Family Bank checks would be deducted from his investment. Petitioners were also forced to turn over their Nissan pickup truck to respondent to pay the obligation.[11]

Prior to the conversion of respondent's contribution into a loan, respondent approached petitioner Nieves and asked her to write an acknowledgment receipt dated 15 July 1990 for the sum of P500,000.00. According to respondent, the receipt would be shown only to his family to assure them that he had invested the money with petitioners. Petitioner Nieves agreed and respondent dictated the words of the receipt to her. The five percent (5%) interest in the receipt would reflect the amount respondent would receive in the profits of the investment. Later, respondent intercalated the date "7/19/90" and the figures "P100,000.00" and "chk. 168514," to reflect the check he issued to petitioner Nieves. Two (2) days later, respondent retrieved the amount of P100,000.00 in cash from Nieves.[12]

On 30 August 1995 the trial court decided in favor of respondent Pablo V. Reyes. It found that petitioners had incurred an obligation in his favor in the amount of P600,000.00 evidenced by the promissory note dated 15 July 1990. The evidence presented by petitioners failed to convince the trial court that the loan obligation was novated into a contribution to the partnership. Petitioners were ordered to pay respondent the amount of P1,472,850.00 with legal interest from the date of filing of the complaint, P15,000.00 as attorney's fees plus P600.00 as appearance fee for every hearing of the case, plus costs of suit.[13]

The Court of Appeals likewise found petitioners liable and held that they secured a loan of P500,000.00 from respondent which was delivered to them on two (2) separate occasions as reflected in their acknowledgment receipt: P300,000.00 on 16 March 1990 and P200,000.00 on 14 July 1990. On 15 July 1990 petitioner Nieves wrote an acknowledgment receipt of the same date at respondent Pablo's request.

When the partnership was formed on 23 March 1990 the loan of P300,000.00 became part of respondent's capital contribution to the partnership. However, the amount remained a loan as evidenced by the acknowledgment receipt and the bank checks received from petitioners. The receipt was executed months after the partnership was formed and was clearly valid and binding. The amounts of the checks respondent received on 16 April 1990 and 13 July 1990, each for P15,000.00, were equivalent to the five percent (5%) interest of the loan of P300,000.00. The amounts received on 17 May 1990 and 15 June 1990, each for P9,000.00, were substantial payments for the interest. At the time these payments were made, the interest for the loan of P200,000.00 was not yet due. The appellate court further ruled that the interest of five percent (5%) per month was not usurious as it was freely agreed upon by the parties and expressly stipulated in writing.[14]

Hence, the Court of Appeals ordered petitioners to pay respondent P500,000.00 with interest at five percent (5%) per month from 15 July 1990. The amount of P400,000.00 was to be deducted from the principal loan beginning 5 February 1993, less the interest payments in the total amount of P69,000.00 when final payment of the total amount would be made.[15]

In this petition for review, petitioners allege that there was a grave misapprehension of facts on the part of the appellate court because it failed to consider the following established facts and events and relate these events to the dates when they occurred: (a) That as of 23 March 1990, a partnership was forged between the parties; (b) That the P500,000.00 given by respondent to petitioners was originally his capital contribution to the partnership; (c) That the receipt dated 15 July 1990 is a simulated document and therefore should not be given any evidentiary weight and should be declared invalid and legally non-existent; (d) That the checks issued from 16 April 1990 to 13 July 1990 in the total amount of P48,000.00 should be considered as advances from petitioners to respondent during the time the partnership was existing and there was no conversion yet of respondent's contribution of P500,000.00 into a loan obligation of petitioners; (e) That respondent's initial capital contribution of P500,000.00 was converted into a non-interest- bearing loan only in October 1990; (f) Hence, the check for P36,000.00 issued to respondent by petitioners on 3 May 1991 was plainly in payment of subject loan agreed on by the parties after respondent's withdrawal of his mentioned investment in the partnership in October 1990; (g) That during the existence of the partnership from 23 March 1990 to September 1990, there was definitely no loan to speak of; and, (h) That the total amount of the payments made by petitioners to respondent as of the date of filing of the complaint is P484,000.00 and therefore the unpaid balance is only P16,000.00.[16]

In opposing the petition, respondent states that it raises questions of fact which are

not allowed in a petition for review on certiorari. The findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed by the Court. Petitioners are changing their theory of defense this late in the proceedings because they have alleged different defenses before the courts below.

Petitioners alleged in their Answer that there was originally a loan of P600,000.00 which was later converted into respondent's contribution to the partnership. But in their appeal to the appellate court and in the present petition, they contend that the amount involved is only P500,000.00 which was respondent's contribution to the partnership, later converted into a non-interest-bearing loan. Further, petitioners are precluded from arguing that the promissory note does not reflect the true intent of the parties since this issue was not raised in their answer but only for the first time on appeal to the Court of Appeals.[17]

While it is true that petitioners failed to raise the question of the genuineness of the acknowledgment receipt, respondent also failed to timely object to the parol evidence consisting of the testimony of petitioner Nieves during the trial to prove that the acknowledgment receipt was a simulated document. In fact, respondent participated in the trial and even cross-examined petitioner Nieves on this point.

Under the Rules of Court, any objection to the admissibility of evidence should be made at the time such evidence is offered or soon thereafter as the objection to its admissibility becomes apparent,[18] otherwise the objection will be considered waived and such evidence will form part of the records of the case as competent and admissible.[19] Failure to object to the parol evidence constitutes a waiver to its admissibility.[20] By his cross-examination, respondent has waived his right to object to parol evidence.[21] He cannot now contend that this issue was not raised before the trial court as this was threshed out during the trial.

The general rule is that only questions of law may be raised in a petition for review on certiorari. The appellate jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law incurred by the latter, the findings of fact of the Court of Appeals being final as to the former. Its only power will be to determine if the legal conclusions drawn from the findings of fact are correct. Barring a showing that the findings complained of are totally devoid of support in the record, such findings must stand, for the Court is not expected or required to examine or refute the oral and documentary evidence submitted by the parties.[22] This is the general rule, which in the instant case, we are not inclined to disturb.

In civil cases, the party having the burden of proof must establish his case by preponderance of evidence,[23] or that evidence which is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than the other side, and that the probability of truth is on one side than on the other.[24] In the case at bar, respondent has successfully overcome the burden of proof.

The Court of Appeals relied on the acknowledgment receipt to hold petitioners liable for the amount of money loaned, finding it to be a valid and binding promissory note. We agree. It is valid and binding between the parties who executed it, as a