

THIRD DIVISION

[G.R. No. 109941, August 17, 1999]

**PACIONARIA C. BAYLON, PETITIONER, VS. THE HONORABLE
COURT OF APPEALS (FORMER NINTH DIVISION) AND LEONILA
TOMACRUZ, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review by way of *certiorari* under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals^[1] dated November 29, 1991 in CA-G.R. CV No. 27779 affirming the decision^[2] of the Regional Trial Court of Quezon City, Branch 88, dated June 14, 1990 in Civil Case No. Q-89-2483 and the Resolution of the Court of Appeals dated April 27, 1993 denying petitioner's Motion for Reconsideration.

The pertinent facts, as found by the trial court and affirmed by respondent court, are briefly narrated as follows:

Sometime in 1986, petitioner Pacionaria C. Baylon introduced private respondent Leonila Tomacruz, the co-manager of her husband at PLDT, to Rosita B. Luanzon.^[3] Petitioner told private respondent that Luanzon has been engaged in business as a contractor for twenty years and she invited private respondent to lend Luanzon money at a monthly interest rate of five percent (5%), to be used as capital for the latter's business. Private respondent, persuaded by the assurances of petitioner that Luanzon's business was stable and by the high interest rate, agreed to lend Luanzon money in the amount of P150,000. On June 22, 1987, Luanzon issued and signed a promissory note acknowledging receipt of the P150,000 from private respondent and obliging herself to pay the former the said amount on or before August 22, 1987.^[4] Petitioner signed the promissory note, affixing her signature under the word "guarantor." Luanzon also issued a postdated Solidbank check no. CA418437 dated August 22, 1987 payable to Leonila Tomacruz in the amount of P150,000.^[5] Subsequently, Luanzon replaced this check with another postdated Solidbank check no. 432945 dated December 22, 1987, in favor of the same payee and covering the same amount.^[6] Several checks in the amount of P7,500 each were also issued by Luanzon and made payable to private respondent.^[7]

Private respondent made a written demand upon petitioner for payment, which petitioner did not heed. Thus, on May 8, 1989, private respondent filed a case for the collection of a sum of money with the Regional Trial Court (RTC) of Quezon City, Branch 88, against Luanzon and petitioner herein, impleading Mariano Baylon, husband of petitioner, as an additional defendant. However, summons was never served upon Luanzon.

In her answer, petitioner denied having guaranteed the payment of the promissory note issued by Luanzon. She claimed that private respondent gave Luanzon the money, not as a loan, but rather as an investment in Art Enterprises and Construction, Inc. - the construction business of Luanzon. Furthermore, petitioner avers that, granting *arguendo* that there was a loan and petitioner guaranteed the same, private respondent has not exhausted the property of the principal debtor nor has she resorted to all the legal remedies against the principal debtor as required by law. Finally, petitioner claims that there was an extension of the maturity date of the loan without her consent, thus releasing her from her obligation.^[8]

After trial on the merits, the lower court ruled in favor of private respondent. In its Decision dated June 14, 1990, it stated that -

The evidence and the testimonies on record clearly established a (sic) fact that the transaction between the plaintiff and defendants was a loan with five percent (5%) monthly interest and not an investment. In fact they all admitted in their testimonies that they are not given any stock certificate but only promissory notes similar to Exhibit "B" wherein it was clearly stated that defendant Luanzon would pay the amount of indebtedness on the date due. Postdated checks were issued simultaneously with the promissory notes to enable the plaintiff and others to withdraw their money on a certain fixed time. This shows that they were never participants in the business transaction of defendant Luanzon but were creditors.

The evidences presented likewise show that plaintiff and others loan their money to defendant Luanzon because of the assurance of the monthly income of five percent (5%) of their money and that they could withdraw it anytime after the due date add to it the fact that their friend, Pacionaria Baylon, expresses her unequivocal guarantee to the payment of the amount loaned.

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WHEREFORE, premises considered, judgment is hereby rendered against the defendants Pacionaria C. Baylon and Mariano Baylon, to pay the plaintiff the sum of P150,000.00, with interest at the legal rate from the filing of this complaint until full payment thereof, to pay the total sum of P21,000.00 as attorney's fees and costs of suit.^[9]

On appeal, the trial court's decision was affirmed by the Court of Appeals. Hence, this present case wherein petitioner makes the following assignment of errors -

I. RESPONDENT COURT ERRED IN HOLDING THAT THE PRIVATE RESPONDENT TOMACRUZ WAS A CREDITOR OF DEFENDANT LUANZON AND NOT AN INVESTOR IN THE CONSTRUCTION BUSINESS OF ART ENTERPRISES & CONSTRUCTION, INC.

II. GRANTING, WITHOUT ADMITTING, THAT PETITIONER-APPELLANT BAYLON WAS A "GUARANTOR" AS APPEARING IN THE NOTE (EXH. "A") THE RESPONDENT COURT ERRED IN RULING THAT PETITIONER-APPELLANT BAYLON IS LIABLE TO THE PRIVATE

RESPONDENT BECAUSE THE LATTER HAS NOT TAKEN STEPS TO EXHAUST THE PROPERTY OF THE PRINCIPAL DEBTOR AND HAS NOT RESORTED TO ALL THE LEGAL REMEDIES PROVIDED BY LAW AGAINST THE DEBTOR, DEFENDANT LUANZON.

III. GRANTING, WITHOUT ADMITTING THAT PETITIONER-APPELLANT BAYLON WAS A GUARANTOR UNDER THAT NOTE (EXHIBIT "A") DATED JUNE 22, 1987, THE LOWER COURT ERRED IN RESOLVING THAT SHE WAS NOT RELEASED FROM HER GUARANTY BY THE SUBSEQUENT TRANSACTIONS BETWEEN THE RESPONDENT-APPELLANT AND DEFENDANT LUANZON.

At the outset, we note that petitioner's claim that the factual findings of the lower court, which were affirmed by the Court of Appeals, were based on a misapprehension of facts and contradicted by the evidence on records^[10] is a bare allegation and devoid of merit. As a rule, the conclusions of fact of the trial court, especially when affirmed by the Court of Appeals, are final and conclusive and cannot be reviewed on appeal by the Supreme Court.^[11] Although this rule admits of several exceptions,^[12] none of the exceptions are in point in the present case. The factual findings of the respondent court are borne out by the record and are based on substantial evidence.

Petitioner claims that there is no loan to begin with; that private respondent gave Luanzon the amount of P150,000, not as a loan, but rather as an investment in the construction project of the latter.^[13] In support of her claim, petitioner cites the use by private respondent of the words "investment," "dividends," and "commission" in her testimony before the lower court; the fact that private respondent received monthly checks from Luanzon in the amount of P7,500 from July to December, 1987, representing dividends on her investment; and the fact that other employees of the Development Bank of the Philippines made similar investments in Luanzon's construction business.^[14]

However, all the circumstances mentioned by petitioner cannot override the clear and unequivocal terms of the June 22, 1987 promissory note whereby Luanzon promised to pay private respondent the amount of P150,000 on or before August 22, 1987. The promissory note states as follows:

June 22, 1987

To Whom It May Concern:

For value received, I hereby promise to pay Mrs. LEONILA TOMACRUZ the amount of ONE HUNDRED FIFTY THOUSAND PESOS ONLY (P150,000.00) on or before August 22, 1987.

The above amount is covered by _____ Check No. _____ dated August 22, 1987.

(signed)

ROSITA B. LUANZON