

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 07831, December 16, 2014 ]**

**SPOUSES ZOILO J. ABELLA AND GREGORIA S. ABELLA,  
PETITIONERS, VS. SPOUSES GRACE ABELLA AND ALDEN ABELLA,  
RESPONDENTS.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

In this Petition for Review under Rule 42 of the 1997 Revised Rules of Civil Procedure, petitioners, SPOUSES ZOILO J. ABELLA and GREGORIA S. ABELLA, seek to reverse and set aside the April 22, 2013 Decision<sup>[1]</sup> of the Regional Trial Court (RTC), 6th Judicial Region, Branch 9, in Kalibo, Aklan, in Civil Case No. 9611 affirming the December 7, 2012 Decision<sup>[2]</sup> of the First Municipal Circuit Trial Court of New Washington and Batan, New Washington, Aklan in a case for Collection of Sum of Money and Damages filed by petitioners against the respondents SPOUSES ALDEN ABELLA and GRACE ABELLA.

The antecedent facts of the case, as summarized by the RTC in its Decision, reads as follows:

"Believing that he had not been completely paid the loan of Eight Hundred Thousand (Php 800,000.00) Pesos he extended to his nephew, Zoilo Abella joined by his wife sued Alden Abella and his wife Grace for collection of sum of money and damages. The loan was given way back in October 2002, and paid in installment, with the remaining balance of One Hundred Thousand (Php 100,000.00) Pesos issued a postdated check in September 2005 that was not made good by the defendant-spouses despite Zoilo's naive trust of returning the check without any written memorandum that it remained outstanding.

Months passed without any payment forthcoming, and an eventual reminder was met with a refusal to pay on defendants' claim of full payment. Defendants insisted in their Answer that Equitable-PCI Bank Check No. 152255 dated September 30, 2005 representing the remaining monetary obligation had been encashed by the plaintiffs.

As it turned out, the defendants did not only issue one, or two checks that September 2005, but three, postdated with three different dates for the same amount of One Hundred Thousand (Php 100,000.00) Pesos each as the outstanding balance of loan. Only the first dated September 30, 2005 was encashed with the bank, while of the remaining two dated November 30, 2005 and January 30, 2006 – the first was exchanged with cash by Grace, while the last is the subject of controversy, as to whether this was made good by the defendants in favor of their uncle Zoilo.

Zoilo insisted that the defendants have not made good the payment of the last check, even if he had already returned possession thereof to Grace. On the other hand, the defendants claim having also exchanged this last check with their payment in cash handed personally to their uncle, who for which reason returned the bill to them.

In resolving the controversy, the court a quo relied upon the strengths and weaknesses of the testimonial evidence of the parties, as well as on the presumption arising from the return of the check to the drawer-defendants."

The dispositive portion of the decision of the MCTC is hereunder quoted, to wit:

"WHEREFORE, premises considered, this Court hereby renders judgment in favor of defendants by ordering the DISMISSAL of the instant Complaint and by directing herein plaintiffs to pay to herein defendants attorney's fees and expenses of litigation in the sum of PhP 25,000.00 and to pay the costs.

SO OREDERED."

Not satisfied with the ruling of the MCTC, petitioners moved for the reconsideration<sup>[3]</sup> thereof but the same was denied per Order<sup>[4]</sup> dated January 14, 2013. Hence, petitioners appealed the same to the RTC.

The parties were required to submit their respective memorandum,<sup>[5]</sup> after the submission thereof, the RTC rendered a decision affirming the MCTC, the dispositive portion thereof reads as follows:

"WHEREFORE, premises considered, the Court finds no cogent reason whatsoever to reverse, alter, or modify the assailed judgment of court a quo which is hereby AFFIRMED in *toto*.

SO OREDERED."

A Motion for Reconsideration<sup>[6]</sup> was filed by petitioners but the motion was denied per Order<sup>[7]</sup> dated June 21, 2013.

Hence, petitioners filed the instant Petition for Review raising the following issues, to wit:

1. THAT THE LOWER COURT HAS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION IN CIVIL CASE NO. 1340 AND DECLARING THE RESPONDENTS TO HAVE FULLY PAID THEIR OBLIGATION TO THE PETITIONERS;
2. THE FINDINGS OF THE LOWER COURT ARE NOT IN ACCORDANCE WITH THE FACTS AND EVIDENCE PRESENTED DURING THE TRIAL OF THE CASE;

The instant petition is bereft of merit.

The primary issue before us is whether or not herein petitioners were able to prove the material allegations of their complaint.

Section 1, Rule 133 of the Rules of Court provides:

'SECTION 1. *Preponderance of evidence, how determined.* - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number."

In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side. Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.<sup>[8]</sup>

In the instant case, the MCTC and the RTC are one in finding that petitioners failed to discharge their burden of proof. The pertinent portion of the MCTC decision is hereunder quoted with approval to wit:

"That plaintiffs failed to discharge the burden of proof which rests upon them is clearly shown by the inconsistencies in their testimonies particularly as to the time of payment of the second check dated November 30, 2005. During his cross-examination last April 27, 2009, plaintiff Engr. Zoilo Abella stated that this second check was returned by him to defendant Grace Abella after she gave him PhP 100,000.00 in cash last March 2006 in payment for its face value. However, during the presentation of the rebuttal evidence last April 19, 2012, Engr. Abella contradicted his previous testimony and declared under oath that this second check was paid by defendant Grace Abella when the latter went to his residence sometime last February 2006. After allegedly giving him PhP 100,000.00 representing the value of the second check, he returned to Grace the same. Unfortunately, co-plaintiff Gregoria Abella's testimony last May 4, 2009 only made matters worse. She claimed that the second check was paid by defendant Grace Abella last March 10, 2006 when the latter paid them a visit at their residence to discuss her loan account with her Uncle Zoilo. It was accordingly on the said date when Grace paid the face value of the second check and the same was returned to her by her Uncle Zoilo after receiving PhP 100,000.00 in cash from her."

Petitioners' contention that the documentary and oral testimonies of respondents are replete with inconsistencies thus negating the latter's claim of payment, is unconvincing.

Petitioners averred that respondents in their Answer with Motion to Dismiss as well