



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ROSEÑA FONTELAR OGAWA,  
Petitioner,

G.R. No. 193089

Present:

- versus -

VELASCO, JR., *J.*, *Chairperson*,  
PERALTA,  
MENDOZA,  
REYES,\* and  
PERLAS-BERNABE, *JJ.*

ELIZABETH  
MENIGISHI,

GACHE

Respondent.

Promulgated:

09 July 2012

*Magpiano*

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DECISION

PERLAS-BERNABE, *J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the March 8, 2010 Decision<sup>1</sup> and June 21, 2010 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 86362 which affirmed with modification the September 1, 2005 Decision<sup>3</sup> of the Regional

\* Acting Member in lieu of Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

<sup>1</sup> Penned by Associate Justice Romeo F. Barza, with Associate Justices Magdangal M. de Leon and Ruben C. Ayson, concurring; *rollo*, pp. 35-50.

<sup>2</sup> Id. at 51-52.

<sup>3</sup> Id. at 64-83.

Trial Court (RTC) of Sorsogon City, Branch 52, granting respondent's counterclaim in the amount of 1,000,000.00 Yen and deleting the award of damages as well as attorney's fees in favor of the petitioner.

### **The Facts**

Petitioner Roseña Fontelar Ogawa and respondent Elizabeth Gache Menigishi were childhood friends and former residents of Sorsogon City. Respondent married a Japanese national, Tomohito Menigishi (Tomohito), and lived in Japan. Sometime in June 1992, the Menigishis visited the Philippines and introduced Yashoyuki Ogawa (Yashoyuki), Tomohito's friend, to petitioner. Yashoyuki and petitioner eventually got married in the Philippines and thereafter, also lived in Japan.

On January 26, 2004, petitioner filed a complaint<sup>4</sup> for sum of money, damages, breach of good human relation and unjust enrichment before the RTC against respondent, docketed as Civil Case No. 2004-7299, alleging that the latter borrowed from her the amounts of ₱15,000.00, ₱100,000.00 and ₱8,000.00, in September 2000, August 2001, and March 2003, respectively. Unable to pay, respondent offered to sell her building and its improvements in Sorsogon City to petitioner for a consideration of ₱1,500,000.00 with the agreement that her outstanding loans with petitioner be deducted from the purchase price and the balance payable in installments.

As partial payment for the properties, petitioner remitted the following amounts to respondent: (a) ₱150,000.00 through the account of her friend

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<sup>4</sup> Id. at 53-57.

Emma Fulleros on October 23, 2003; and (b) ₱250,772.90 by way of bank remittance to respondent's Equitable-PCI Bank Account on December 8, 2003. Having paid huge amounts and in order to protect her proprietary rights, petitioner then demanded for the execution of the corresponding deed of sale, but respondent backed out from the deal and reneged on her obligations.

In her Answer with Counterclaim,<sup>5</sup> respondent specifically denied her indebtedness to petitioner and claimed that it was the latter who owed her 1,000,000.00 Yen, equivalent to about ₱500,000.00, as evidenced by a receipt. In partial payment of her indebtedness, petitioner, thus, remitted the amounts of ₱150,000.00 and ₱250,000.00 to respondent, leaving a balance of ₱100,000.00. Respondent also sought reimbursement of the advances she allegedly made for the wedding expenses of petitioner and Yashoyuki in the amount of 4,000,000.00 Yen. While she admitted offering her property for sale to petitioner, respondent explained that the sale did not materialize as petitioner failed to produce the stipulated downpayment. By way of counterclaim, respondent prayed for the award of 4,000,000.00 Yen, the balance of petitioner's purported loan in the amount of P100,000.00; moral and exemplary damages; and attorney's fees.

### **The RTC Ruling**

Finding that respondent was indeed indebted to petitioner in the amounts of ₱150,000.00 and ₱250,772.90 or the total amount of ₱400,772.90, the RTC rendered a Decision<sup>6</sup> dated September 1, 2005, thus:

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<sup>5</sup> Id. at 58-62.

<sup>6</sup> Id. at 121-140.

1. Ordering the defendant to pay the plaintiff the amount of P400,772.90 plus interest of 12% from the date of filing of this case until the same shall have been paid in full.

2. Ordering the defendant to reimburse the plaintiff for the actual expenses she incurred in filing the instant case, to wit:

- a. P54,000.00 for her fare of plane tickets
- b. P7,355.00 for docket fees

3. Ordering the defendant to pay the plaintiff the following amounts:

- a. P25,000.00 – moral damages
- b. P25,000.00 – exemplary damages
- c. P50,000.00 – attorney's fees
- d. P1,000.00 – per appearance of her lawyer

SO ORDERED.

The RTC refused to give credence to respondent's testimony on her counterclaims for being incredible, inconsistent, and contrary to human experience. It likewise disregarded the receipt presented by respondent as proof of petitioner's purported indebtedness of 1,000,000.00 Yen.

### **The CA Ruling**

On appeal, the CA affirmed the RTC's awards of the sums of ₱150,000.00 and ₱250,772.90 in favor of petitioner and sustained the denial of respondent's counterclaim of 4,000,000.00 Yen for lack of evidence. However, it gave probative value to the receipt for 1,000,000.00 Yen and held it sufficient to establish petitioner's indebtedness to respondent, considering the purported admission of the former's counsel as well as petitioner's own failure to specifically deny the same under oath as provided for under Section 8, Rule 8 of the Rules of Court. Consequently, it granted

respondent's counterclaim of 1,000,000.00 Yen. Finally, having found both parties at fault, the CA deleted the awards of damages and attorney's fees.

### **Issue Before The Court**

In this petition, petitioner advances the question of whether the disputed receipt sufficiently established respondent's counterclaim that petitioner owed her 1,000,000.00 Yen.

### **Petitioner's Arguments**

Petitioner argues that the receipt for 1,000,000 Yen is not a promissory note and as such, its due execution and genuineness need not be denied under oath. Moreover, she denied any admission of liability that can be deduced from her counsel's manifestation during the trial that "the one who usually prepares the receipt is the obligor or the creditor."

### **Respondent's Arguments**

Respondent, in her Comment, prays for the dismissal of the petition insisting that the CA did not err in sustaining the obligation of petitioner in her favor on the basis of the disputed receipt which the latter never denied and her counsel even admitted.

### **The Court's Ruling**

The Court finds merit in the petition.

At the outset, it should be emphasized that the factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive upon the Court and may not be reviewed on appeal. However, when the RTC and the CA differ in their findings of fact and conclusions, as in this case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.<sup>7</sup>

In this case, the RTC and the CA gave different interpretations on the context of the receipt (Exhibit 1) executed by the parties and arrived at incongruent findings. On one hand, the RTC considered it as having failed to establish any right on the part of respondent to collect from petitioner the purported indebtedness of 1,000,000.00 Yen, while on the other, the CA found it sufficient to confer liability.

A receipt is defined as a written and signed acknowledgment that money or good was delivered or received.<sup>8</sup> Exhibit 1, upon which

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<sup>7</sup> *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, 438 SCRA 224-243.

<sup>8</sup> *Towne & City Development Corporation v. Court of Appeals*, G.R. No. 135043, July 14, 2004, 434 SCRA 356, 363.

respondent relies to support her counterclaim, sufficiently satisfies this definition. It reads in full:

June 13, 2003	
I receive the total amount of 1,000,000 Yen (x x x)	
Signed:	
Elizabeth Menigishi	Roseña Ogawa

However, while indubitably containing the signatures of both parties, a plain reading of the contents of Exhibit 1 negates any inference as to the nature of the transaction for which the 1,000,000 Yen was received and who between the parties is the obligor and the obligee. What is apparent is a mere written and signed acknowledgment that money was received. There are no terms and conditions found therein from which a right or obligation may be established. Hence, it cannot be considered an actionable document<sup>9</sup> upon which an action or defense may be founded.

Consequently, there was no need to deny its genuineness and due execution under oath in accordance with Section 8, Rule 8 of the Rules of Civil Procedure which provides:

Section 8. *How to contest such documents.* – When an action or defense is founded upon a written instrument, copied in, or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be party to the instrument or when compliance with an order for an inspection of the original is refused.

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<sup>9</sup> *Duarte v. Duran*, G.R. No. 173038, September 14, 2011.

Corollary thereto, the manifestation made in open court by Atty. Gerona, petitioner's counsel, cannot be construed as an admission of her liability. The pertinent testimony of respondent and the manifestation of Atty. Gerona on May 18, 2005 read:

Q: Ms. Witness, on the cross-examination, the counsel asked you how come that the signature of Rosena which was marked as EXHIBIT "1-a" and your signature marked as EXHIBIT "1-b" are parallel to each other?

A: Because it was Rosena who made this. I was just made to confirm that she borrowed money from me.

Q: Whose handwriting are these, the wording I received One Million Yen... (interrupted)

ATTY. GERONA: (TO THE COURT)

That is admitted, Your Honor, because the one who usually prepares the receipt is the obligor or the creditor.<sup>10</sup>

From the foregoing exchange, it cannot be clearly ascertained who between the two signatories is the obligor and obligee. Atty. Gerona's statement that the one who usually prepares the receipt is the obligor or the creditor did not conclusively imply that petitioner owed respondent 1,000,000.00 Yen, or *vice versa*. Hence, absent any other evidence to prove the transaction for which the receipt was issued, the Court cannot consider Exhibit 1 as evidence of a purported loan between petitioner and respondent which the former categorically denied.

It is settled that the burden of proof lies with the party who asserts his/her right. In a counterclaim, the burden of proving the existence of the claim lies with the defendant, by the quantum of evidence required by law,

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<sup>10</sup> TSN, May 18, 2005, pp. 33-34.



which in this case is preponderance of evidence. On this score, Section 1, Rule 133 of the Revised Rules on Evidence 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 of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witness' 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 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.

“Preponderance of evidence” is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of evidence” or “greater weight of credible evidence.”<sup>11</sup>

From the evidence on record, it is clear that respondent failed to prove her counterclaim by preponderance of evidence.

In view of the foregoing, the Court cannot sustain the findings of the CA that both parties are at fault.<sup>12</sup> Accordingly, the award of damages granted by the RTC in favor of petitioner must be reinstated with the modification that the award of actual damages in the amount of ₱400,772.00,<sup>13</sup> in the nature of a loan or forbearance of money, shall earn 12% *per annum* reckoned from the date of filing of the instant complaint

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<sup>11</sup> *Amoroso v. Alegre*, G.R. No. 142766, June 15, 2007, 524 SCRA 641, 652.

<sup>12</sup> *Rollo*, p. 48.

<sup>13</sup> *Id.* at 139.

granted by the RTC in favor of petitioner must be reinstated with the modification that the award of actual damages in the amount of ₱400,772.00,<sup>13</sup> in the nature of a loan or forbearance of money, shall earn 12% interest *per annum* reckoned from the date of filing of the instant complaint until the finality of this Decision. Thereafter, the judgment award inclusive of interest shall bear 12% annual interest until fully paid.<sup>14</sup>

**WHEREFORE**, the instant petition is **GRANTED**. The March 8, 2010 Decision and June 21, 2010 Resolution of the Court of Appeals are **REVERSED and SET ASIDE** and the September 1, 2005 Decision of the Regional Trial Court of Sorsogon City, Branch 52 is **REINSTATED with MODIFICATION** ordering respondent Elizabeth Gache Menigishi to pay petitioner Roseña Fontelar Ogawa the amount of ₱400,772.00 plus 12% interest *per annum* reckoned from the date of filing of the instant complaint until the finality of this Decision. Thereafter, the judgment award inclusive of interest shall bear 12% annual interest until fully paid.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

<sup>13</sup> Id. at 139.

<sup>14</sup> *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95 and 96.

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**

Associate Justice



**JOSE CATRAL MENDOZA**

Associate Justice



**BIENVENIDO L. REYES**

Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', with a stylized, cursive script.

**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)