



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

METROPOLITAN BANK AND
TRUST COMPANY,
Petitioner,

G.R. No. 185590

Present:

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

— versus —

LEY CONSTRUCTION AND
DEVELOPMENT CORPORATION
and SPOUSES MANUEL LEY and
JANET LEY,
Respondents.

Promulgated:

DEC 03 2014

X ----- X

DECISION

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' Decision¹ 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 Resolution² dated December 5, 2008 denying the Bank's motion for reconsideration.

The Court of Appeals adopted the following recital of facts in the Decision³ 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

¹ Rollo, pp. 27-42; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicedican, concurring.

² Id. at 43-44.

³ Id. at 121-124.

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plaintiff Philippine Banking Corporation⁴ 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)

⁴

Id. at 4. The Philippine Banking Corporation is now the Metropolitan Bank and Trust Corporation, petitioner in this case.

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:

⁵ Id. at 121-123.
⁶ Id. at 30-31.
⁷ Id. at 31.

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

⁸ Id. at 124.
⁹ Id. at 137-139.
¹⁰ Id. at 139.

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

¹¹ Id. at 144.
¹² Id. at 35-37.
¹³ Id. at 38-40.

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.

First, the Bank's petition suffers from a fatal infirmity. In particular, it contravenes the elementary rule of appellate procedure that an appeal to this Court by petition for review on *certiorari* under Rule 45 of the Rules of Court "shall raise only questions of law."¹⁷ The rule is based on the nature of this Court's appellate function – this Court is not a trier of facts¹⁸ – and on the evidentiary weight given to the findings of fact of the trial court which have been affirmed on appeal by the Court of Appeals – they are conclusive on this Court.¹⁹ While there are recognized exceptions to the rule,²⁰ this

¹⁴ Id. at 40.

¹⁵ Id. at 41.

¹⁶ Id. at 241-255.

¹⁷ See RULES OF COURT, Rule 45, Section 1.

¹⁸ *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148, 152.

In particular, the Court said:

An inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court, for this Court is not a trier of facts. Neither is it our function to reexamine and weigh anew the respective evidence of the parties. (Citation omitted.)

¹⁹ *Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010, 628 SCRA 404, 413.

In particular, the Court stated:

Factual findings of the trial court which are adopted and confirmed by the Court of Appeals are final and conclusive on the Court unless the findings are not supported by the evidence on record x x x. (Citation omitted.)

²⁰ The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are

Court sees no reason to apply the exception and not the rule in this case.

The conceptual distinction between a question of law and a question of fact is well-settled in case law:

There is a “question of law” when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a “question of fact” when the doubt or controversy arises as to the truth or falsity of the alleged facts. x x x.²¹

The issue of whether or not the Bank was able to establish its cause of action by preponderant evidence is essentially a question of fact. Stated in another way, the issue which the Bank raises in this petition is whether the evidence it presented during the trial was preponderant enough to hold LCDC and the spouses Ley liable.

The required burden of proof, or that amount of evidence necessary and sufficient to establish one’s claim or defense, in civil cases is preponderance of evidence.²² Preponderance of evidence is defined as follows:

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 the credible evidence.” **Preponderance of evidence is a phrase which, in the last analysis, means probability to truth.** It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.²³ (Emphasis supplied, citation omitted.)

conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner’s main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion. (*Development Bank of the Philippines v. Licuanan*, 545 Phil. 544, 553 [2007]).

²¹ *Republic v. Medida*, G.R. No. 195097, August 13, 2012, 678 SCRA 317, 324.

²² Section 1, Rule 131 of the Rules of Court defines “burden of proof” as follows:

Section 1. *Burden of proof.* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

On the other hand, Section 1, Rule 133 describes preponderance of evidence as follows:

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.

²³ *Magdiwang Realty Corporation v. Manila Banking Corporation*, G.R. No. 195592, September 5, 2012, 680 SCRA 251, 265.

As preponderance of evidence refers to the probability to truth of the matters intended to be proven as facts, it concerns a determination of the truth or falsity of the alleged facts based on the evidence presented. Thus, a review of the respective findings of the trial and the appellate courts as to the preponderance of a party's evidence requires that the reviewing court address a question of fact.

Moreover, a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. Evidence is the means, sanctioned by the Rules of Court, of ascertaining in a judicial proceeding the truth respecting a matter of fact.²⁴ As such, the question of sufficiency or insufficiency of evidence, the basic issue presented by the Bank, pertains to the question of whether the factual matters alleged by the Bank are true. Plainly, it is a question of fact and, as such, not proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. It was incumbent upon the Bank to demonstrate that this case fell under any of the exceptions to this rule but it failed to do so.

Second, the Bank attempts to avoid the “only questions of law” rule for appeals filed under Rule 45 by invoking the misapprehension of facts exception.²⁵ According to the Bank, the trial and the appellate courts misapprehended the facts with respect to the determination of the basis of the Bank's cause of action.²⁶ In particular, the Bank contends that both the trial and the appellate courts erred in the consideration of the proper actionable document upon which the Bank based its cause of action. The Bank asserts that its cause of action is not grounded on the Letter of Credit but on the Trust Receipt.

The Bank's reference to the Trust Receipt as its “primary actionable document”²⁷ is mistaken and misleading.

The nature of the cause of action is determined by the facts alleged in the complaint.²⁸ A party's cause of action is not what the party says it is, nor is it what the designation of the complaint states, but what the allegations in the body define and describe.²⁹

In this case, the Bank's allegations as to the basis of its cause of action against LCDC and the spouses Ley, however, belie the Bank's claim. In particular, the relevant portion of the Bank's Complaint³⁰ reads:

²⁴ RULES OF COURT, Rule 128, Section 1.

²⁵ *Development Bank of the Philippines v. Licuanan*, supra note 20. See exception No. 4.

²⁶ *Rollo*, pp. 20-21.

²⁷ *Id.* at 245.

²⁸ *Heirs of Abadilla v. Galarosa*, 527 Phil. 264, 277 (2006).

²⁹ *De la Cruz v. Court of Appeals*, 539 Phil. 158, 172 (2006).

³⁰ *Records*, pp. 1-23.

1.2 The defendants:

a. Ley Construction and Development Corporation (LCDC) is a general contracting firm engaged in the construction of buildings, infrastructures, and other civil works with principal office at Mapulang Lupa St., Malinta, Valenzuela, Metro Manila where it [may be] served with summons and other processes of this Court.

b. Sps. Manuel and Janet C. Ley, the major stockholders of defendant (LCDC) with business address at 23rd Floor Pacific Star Bldg., Makati Avenue, Makati, Metro Manila where the processes of this Honorable Court [may be] served upon them are impleaded herein in their capacity as Surety for the obligation incurred by defendant LCDC with the herein plaintiff by virtue of a Continuing Surety Agreement they executed in favor of the plaintiff, a copy of which is hereto attached as Annex "A";

2. STATEMENT OF CAUSE OF ACTION AGAINST
DEFENDANT LCDC AND SPOUSES MANUEL AND JANET LEY

2.1 In conjunction with its business, defendant LCDC sought to import "Iraqi Cement" from Iraq thru its supplier "Global Enterprises, Limited" with address at 15 A. Tuckeys Lane, Gibraltar.

2.2 To finance this importation, defendant LCDC applied with the plaintiff for the opening of Letter of Credit as evidenced by the Application and Agreement for Commercial Letter of Credit, copy of which is marked as Annex "B" and made integral part hereof.

2.3 Acting on defendant[']s oral representation and those stated in its application (Annex "B"), plaintiff issued on April 26, 1990 its Letter of Credit No. DC 90[-]303-C in favor of the supplier Global Enterprises Limited, as beneficiary in the amount of U.S. Dollars: EIGHT HUNDRED TWO THOUSAND FIVE HUNDRED (US \$802,500) for the account of defendant, covering the importation of 15,000 metric tons of Iraqi Cement from Iraq, copy of the Letter of Credit is marked as Annex "C" and made integral part hereof;

2.4 On May 3, 1990, defendant applied for and filed with plaintiff an Application for Amendment of Letter of Credit, copy of which is attached as Annex "D" hereof, and another application for amendment was filed on May 11, 1990 copy of which is marked as Annexes "E" and "E-1" hereof;

2.5 After these amendments were communicated to the negotiating bank, Credit Suisse of Zurich, Switzerland, the beneficiary negotiated its Letter of Credit therewith. Thereafter, Credit Suisse sent a reimbursement claim by telex to American Express Bank Ltd., New York on July 25, 1990 for the amount of US\$766,708.00 with a Certification that all terms and conditions of the credit were complied with;

2.6 Accordingly, on July 30, 1990, American Express Bank debited plaintiff's account US\$770,691.30 and credited Credit Suisse Zurich Account with American Express Bank Ltd., New York for the

negotiation of Letter of Credit;

2.7 On August 6, 1990, plaintiff received from Credit Suisse the necessary shipping documents pertaining to Letter of Credit DC 90-303-C all of which were in turn delivered and received by the defendant on August 16, 1990 as evidenced by their acknowledgment appearing on the plaintiff's register copy, a copy of which is hereto attached as Annex "F";

2.8 Upon defendant's receipt of the shipping documents and other documents of title to the imported goods, defendant signed a trust receipt manifesting its acceptance/conformity that the negotiation of the LC is in order. A copy of the TR and the draft issued by the defendant as a means of paying its LC obligation to the plaintiff are hereto attached and marked as Annexes "G" and "G-1" hereof;

2.9 Sometime during the 3rd week of August, defendant LCDC informed the plaintiff that the expected shipment of cement subject matter of the LC was allegedly held up in Iraq purportedly on account of the trade embargo imposed against it by the United Nation[s] and sought assistance from the plaintiff to secure no-dollar import permit from the Central Bank as defendant was negotiating with its supplier Global Enterprises Limited, Inc. for an alternate shipment of Syrian Cement.

2.10 Plaintiff acceded to the request of the defendant and conformably secured the requested approval from Central Bank to allow the defendant to import cement on a no-dollar basis, a copy of the defendant's request as well as the Central Bank approval are hereto attached as Annexes "H" and "H-1".

2.11 About two months after the plaintiff has obtained the requested Central Bank approval (Annex "H-1")[.] plaintiff was again advised by the defendant that the alternate shipment of Syrian Cement is no longer forthcoming and that defendant LCDC after a series of negotiation with its supplier has agreed with the latter for a reimbursement of the value of the negotiated Letter of Credit.

2.12 While defendant was negotiating with its supplier for that replacement of Syrian cement, defendant advised plaintiff not to initiate any move as it might jeopardize defendant's negotiation with its supplier.

2.13 In December 1990, four (4) months from defendant's receipt of the shipping and export documents from plaintiff, as it became perceptible that defendant's negotiation with its supplier for reimbursement or replacement would fail[,] defendant for the first time asked for copies of the beneficiary's draft, the Charter Party Agreement even as it contested the validity of defendant's obligation to plaintiff.

2.14 For the first time, defendant also began to assail the validity of the payment made by the plaintiff to the supplier (Global Enterprises Ltd.) through Credit Suisse, with the intention of avoiding the payment of its lawful obligation to reimburse the plaintiff the amount of US \$802,500 which obligation is now long overdue and unpaid notwithstanding repeated demands.

2.15 **The obligation covered by the aforesaid Letter of Credit** bears interest and charges at the rate of 30% per annum which rate [may be] increased or decreased within the limits allowed by the law.

2.16 The prompt payment of **the obligations contracted by defendant LCDC from the plaintiff inclusive of the subject Letter of Credit** is guaranteed by defendant Sps. Manuel and Janet Ley by making themselves jointly and severally liable with the defendant LCDC in accordance with the terms of a Continuing Surety Agreement which they executed in favor of the plaintiff (Annex “A”).³¹ (Emphases supplied.)

That the Bank’s cause of action was hinged on the Letter of Credit is unmistakable. Taken as a whole, the Bank’s allegations make a cause of action based on the Letter of Credit. The Trust Receipt was mentioned incidentally and appears only in paragraph 2.8 of the Complaint.³² In stark contrast, the Letter of Credit figures prominently in the Complaint as it is mentioned in almost all of the paragraphs of Part 2 (Statement of Cause of Action Against Defendant LCDC and Spouses Manuel and Janet Ley). More tellingly, in paragraph 2.15, the Bank speaks of “the obligation covered by the aforesaid Letter of Credit.”³³

Moreover, under paragraphs 1.2(b) and 2.16 of the Complaint, the spouses Ley have been impleaded as co-defendants of LCDC on account of their execution of a Continuing Surety Agreement in the Bank’s favor to guarantee the “prompt payment of the obligations contracted by defendant LCDC from the plaintiff inclusive of the subject Letter of Credit.”³⁴ In short, the Bank seeks to hold liable (1) LCDC for its obligations under the Letter of Credit, and (2) the spouses Ley for their obligations under the Continuing Surety Agreement which stands as security for the Letter of Credit and not for the Trust Receipt.

Another significant factor that contradicts the Bank’s assertion that its “primary actionable document” is the Trust Receipt is the manner it pleaded the Letter of Credit and the Trust Receipt, respectively.

The relevant rule on actionable documents is Section 7, Rule 8 of the Rules of Court which provides:

Section 7. *Action or defense based on document.* – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

³¹ Id. at 1-6.

³² Id. at 4.

³³ Id. at 5.

³⁴ Id. at 1 and 6.

An “actionable document” is a written instrument or document on which an action or defense is founded. It may be pleaded in either of two ways:

- (1) by setting forth the substance of such document in the pleading and attaching the document thereto as an annex, or
- (2) by setting forth said document verbatim in the pleading.³⁵

A look at the allegations in the Complaint quoted above will show that the Bank did not set forth the contents of the Trust Receipt verbatim in the pleading. The Bank did not also set forth the substance of the Trust Receipt in the Complaint but simply attached a copy thereof as an annex. Rather than setting forth the substance of the Trust Receipt, paragraph 2.8 of the Complaint shows that the Bank simply described the Trust Receipt as LCDC’s manifestation of “its acceptance/conformity that the negotiation of the [Letter of Credit] is in order.”³⁶

In contrast, while the Bank did not set forth the contents of the Letter of Credit verbatim in the Complaint, the Bank set forth the substance of the Letter of Credit in paragraph 2.3 of the Complaint and attached a copy thereof as Annex “C” of the Complaint. The Bank stated that it “issued on April 26, 1990 its Letter of Credit No. DC 90[-]303-C in favor of the supplier Global Enterprises Limited, as beneficiary[,] in the amount of U.S. Dollars: EIGHT HUNDRED TWO THOUSAND FIVE HUNDRED (US\$802,500.00) for the account of defendant [LCDC], covering the importation of 15,000 metric tons of Iraqi Cement from Iraq.”³⁷

Thus, the Bank’s attempt to cling to the Trust Receipt as its so-called “primary actionable document” is negated by the manner of its allegations in the Complaint. Thus, too, the trial and the appellate courts did not misapprehend the facts when they considered the Letter of Credit as the basis of the Bank’s cause of action.

Third, a look at the Letter of Credit, the actionable document on which the Bank relied in its case against LCDC and the spouses Ley, confirms the identical findings of the Regional Trial Court and the Court of Appeals.

In *Keng Hua Paper Products Co., Inc. v. Court of Appeals*, we held³⁸:

In a letter of credit, there are three distinct and independent contracts: (1) the contract of sale between the buyer and the seller, (2) the contract of the buyer with the issuing bank, and (3) the letter of credit

³⁵ Regalado, Florenz, REMEDIAL LAW COMPENDIUM (10th Edition), Vol. I, p. 177.

³⁶ Records, p. 4.

³⁷ Id. at 2.

³⁸ 349 Phil. 925, 939 (1998).

proper in which the bank promises to pay the seller pursuant to the terms and conditions stated therein. x x x.

Here, what is involved is the second contract – the contract of LCDC, as the buyer of Iraqi cement, with the Bank, as the issuer of the Letter of Credit. The Bank refers to that contract in the Petition for Review on *Certiorari* and the Memorandum filed by the Bank in this case when the Bank argues that, as LCDC and the spouses Ley have admitted the issuance of the Letter of Credit in their favor, they are “deemed to have likewise admitted the terms and conditions thereof, as evidenced by the stipulation therein appearing above the signature of respondent Janet Ley,”³⁹ viz:

“In consideration of your arranging, at my/o[u]r request[,] for the establishment of this commercial letter of credit (hereinafter referred to as the [“]Credit[”]) substantially in accordance with the foregoing, I/we hereby covenant and agree to each and all of [the] provisions and conditions stipulated on the reverse side hereof.”⁴⁰

The above stipulation actually appears on the Application and Agreement for Commercial Letter of Credit, the Bank’s Exhibit “B.” It is the contract which contains the provisions and conditions governing the legal relationship of the Bank and LCDC, particularly their respective rights and obligations, in connection with the Bank’s issuance of Letter of Credit No. DC 90-303-C. The importance of the provisions and conditions supposed to be stipulated on the reverse side of the Application and Agreement for Commercial Letter of Credit is underscored by the following note appearing below the space for the signature of Janet Ley:

IMPORTANT: PLEASE READ PROVISIONS AND CONDITIONS ON
REVERSE SIDE HEREOF BEFORE SIGNING ABOVE.⁴¹

However, the Bank’s Exhibit “B” has nothing on its reverse side. In other words, the reverse side of the Application and Agreement for Commercial Letter of Credit is a blank page.⁴² Even the copy of the Application and Agreement for Commercial Letter of Credit attached to the Bank’s Complaint also has nothing on its back page.⁴³

A cause of action – the act or omission by which a party violates the right of another⁴⁴ – has three essential elements:

- (1) the existence of a legal right in favor of the plaintiff;
- (2) a correlative legal duty of the defendant to respect such right; and

³⁹ *Rollo*, pp. 14 and 243, respectively.

⁴⁰ *Id.*

⁴¹ Records, p. 533.

⁴² *Id.*

⁴³ *Id.* at 12.

⁴⁴ RULES OF COURT, Rule 2, Section 2.

- (3) an act or omission by such defendant in violation of the right of the plaintiff with a resulting injury or damage to the plaintiff for which the latter may maintain an action for the recovery of relief from the defendant.⁴⁵


Although the first two elements may exist, a cause of action arises only upon the occurrence of the last element, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief.⁴⁶ In this case, however, even the legal rights of the Bank and the correlative legal duty of LCDC have not been sufficiently established by the Bank in view of the failure of the Bank's evidence to show the provisions and conditions that govern its legal relationship with LCDC, particularly the absence of the provisions and conditions supposedly printed at the back of the Application and Agreement for Commercial Letter of Credit. Even assuming *arguendo* that there was no impropriety in the negotiation of the Letter of Credit and the Bank's cause of action was simply for the collection of what it paid under said Letter of Credit, the Bank did not discharge its burden to prove every element of its cause of action against LCDC.

This failure of the Bank to present preponderant evidence that will establish the liability of LCDC under the Letter of Credit necessarily benefits the spouses Ley whose liability is supposed to be based on a Continuing Surety Agreement guaranteeing the liability of LCDC under the Letter of Credit.

The Court therefore finds no reason to disturb the rulings of the courts *a quo* as the petition put forward insufficient basis to warrant their reversal.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

⁴⁵ *Turner v. Lorenzo Shipping Corporation*, G.R. No. 157479, November 24, 2010, 636 SCRA 13, 30.

⁴⁶ *Id.*

WE CONCUR:

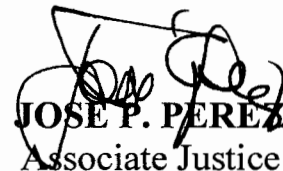


MARIA LOURDES P. A. SERENO


Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




JOSE P. PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



MARIA LOURDES P. A. SERENO
Chief Justice