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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES FERNANDO and MA. ELENA SANTOS, *Petitioners,*	**G.R. No. 183034**
	Present:
- versus -	CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
LOLITA ALCAZAR, represented by her Attorney-in-Fact DELFIN CHUA, *Respondent.*	Promulgated: MAR 12 2014

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DECISION

DEL CASTILLO, *J.*:

The rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to such instrument.

Assailed in this Petition for Review on *Certiorari*[1] are the September 27, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 87935, entitled "*Lolita Alcazar, represented by her Attorney-in-Fact, Delfin Chua, Plaintiff-Appellee, versus Spouses Fernando T. Santos, Defendants-Appellants*," and its May 23, 2008 Resolution[3] denying petitioners' Motion for Reconsideration.

Factual Antecedents

In February 2001, respondent Lolita Alcazar, proprietor of Legazpi Color

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1 *Rollo*, pp. 8-38.

2 Id. at 41-56; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

3 Id. at 59.

Center (LCC), instituted through her attorney-in-fact Delfin Chua a Complaint[4] for sum of money against the petitioners, spouses Fernando and Ma. Elena Santos, to collect the value of paint and construction materials obtained by the latter from LCC amounting to ₱1,456,000.00, which remained unpaid despite written demand. The case was docketed as Civil Case No. 9954 and assigned to Branch 5 of the Regional Trial Court of Legazpi City. Respondent's cause of action is based on a document entitled "Acknowledgment"[5] apparently executed by hand by petitioner Fernando, thus:

> ACKNOWLEDGMENT
>
> This is to certify that I acknowledge my obligation in the amount of One Million Four Hundred Fifty Six Thousand (₱1,456,000), Philippine Currency with LEGAZPI COLOR CENTER, LEGAZPI CITY.
>
> Signed at No. 32 Agno St. Banaue, Quezon City on December 12, 2000.
>
> (signed)
> FERNANDO T. SANTOS
> Debtor
>
> Signed in the presence of:
>
> (signed)
> TESS ALCAZAR
> Proprietress
> Legazpi Color Center
>
> Witnesses in the signing:
>
> (signed) (signed)
> DELFIN A. CHUA AILEEN C. EDADES[6]

Respondent alleged in her Complaint:

> x x x x
>
> 4. That as part of the agreement, defendants also obligated themselves to pay plaintiff at the rate of 3% interest per month based on the unpaid principal, to cover the cost of money;
>
> 5. That as of December, 2000, the total obligation of defendants with plaintiff which consists of principal and interest was ₱1,456,000.00, a copy of the document where defendants acknowledged their unpaid obligation is hereto attached as Annex "B"; (referring to the above Acknowledgment)
>
> 6. That on January 5, 2001, plaintiff sent a final demand to defendants to pay the indebtedness, but said demand fell on deaf ears and defendants did not

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4 Id. at 79-81.
5 Id. at 83; Exhibit "A."
6 Id.

> even bother to communicate with plaintiff, copy of the demand letter is hereto attached as Annex "C";[7]

She thus prayed that judgment be rendered ordering petitioners to pay her the sum of ₱1,456,000.00, with interest at the rate of 3% per month; attorney's fees in the amount of ₱72,800.00, and ₱1,500.00 per court appearance; and costs of the suit.

In their Answer,[8] petitioners sought the dismissal of the Complaint, alleging among others that –

> 4. Paragraph 5 is specifically denied as the document which Defendant Fernando T. Santos signed does not reflect the true contract or intention of the parties, the actionable document is incorrect and has to be reformed to reflect the real indebtedness of the defendants;
>
> 5. Paragraph 6 of the complaint is specifically denied as the same does not reflect the correct amount. The defendants['] computation is that the amount of ₱600,000.00 is the only amount due and the instrument used as the actionable document does not reflect the correct substance of the transaction and indicates a reformation of the actionable document;
>
> 6. Paragraph 7 is specifically denied as defendants are willing to pay the correct amount, not the amount in the complaint as the same does not indicate the correct amount owing to the plaintiff;
>
> x x x x
>
> VERIFICATION
>
> I, Fernando T. Santos[,] of legal age, Filipino[,] married and resident of Banawe, Quezon City[,] under oath declare:
>
> 1. That I am the defendant in the above entitled case;
>
> 2. That I have read and understood the contents thereof and affirm that the allegations contained therein are true and correct of my personal knowledge[;]
>
> 3. That I have not commenced any other action or proceeding involving x x x the same issues in the Supreme Court, Court of Appeals or any other tribunal/agency[;]
>
> 4. That to the best of my knowledge, no such action or proceeding involving the same issues in the Supreme Court, Court of Appeals or any other tribunal/agency [is pending];
>
> 5. That if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme

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7 Id. at 79.
8 Id. at 86-88.

> Court, Court of Appeals or any other tribunal/agency, I undertake to report the fact within 5 days therefrom to this court.
>
> IN WITNESS WHEREOF, I have hereunto set [my] hand this April 18, 2001 x x x.
>
> (signed)
> Fernando T. Santos
> Defendant[9]

Pre-trial was conducted. On September 26, 2005, the trial court issued its Pre-trial Order[10] setting forth the matters taken up during the pre-trial conference and the schedule of hearings. The presentation of respondent's evidence was set on October 10; November 8 and 21; and December 6 and 13, 2005. Petitioners were scheduled to present their case on January 9 and 23; and February 6, 2006.[11]

On November 8, 2005, respondent presented her evidence and testified in court as the lone witness. On November 21, 2005, she made a formal offer of her evidence and rested her case.

On January 17, 2006, petitioners filed a Demurrer to Evidence,[12] which respondent opposed. Petitioners argued that the Acknowledgment – respondent's Exhibit "A" which was presented in court – was not an original copy and thus inadmissible; petitioners' receipt of the written demand was not proved; the alleged deliveries of paint and construction materials were not covered by delivery receipts; and respondent's testimony was merely hearsay and uncorroborated.

On January 26, 2006, the trial court issued an Order[13] denying petitioners' demurrer for lack of merit. In the same Order, the trial court scheduled the presentation of petitioners' evidence in the morning and afternoon sessions of February 20, 2006.

Petitioners moved to reconsider the trial court's January 26, 2006 Order. On February 20, 2006, the trial court issued an Order[14] denying petitioners' Motion for Reconsideration and scheduled the presentation of evidence for the petitioners on March 20, 2006.

On March 15, 2006, petitioners moved to reset the March 20, 2006 scheduled hearing, on the ground that on said date and time, their counsel was to

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9 Id. at 86, 88.
10 Id. at 105-106.
11 Id. at 106.
12 Id. at 110-116.
13 Id. at 118.
14 Records, p. 201.

appear in another scheduled case.

On March 20, 2006, or the day of the scheduled hearing, petitioners' counsel failed to appear, prompting the trial court to issue an Order[15] 1) denying petitioners' March 15, 2006 motion to reset for lack of merit and for violating Section 4, Rule 15 of the 1997 Rules of Civil Procedure;[16] 2) declaring that petitioners have waived their right to present evidence; and 3) declaring that Civil Case No. 9954 is deemed submitted for decision.

Petitioners went up to the CA on *certiorari*. Docketed as CA-G.R. SP. No. 93889, the Petition questioned the denial of petitioners' demurrer. Meanwhile, they filed a Motion for Reconsideration[17] of the March 20, 2006 Order denying their motion to reset, but the trial court denied the same in an Order dated April 24, 2006.[18]

The Decision of the Regional Trial Court

On June 27, 2006, the trial court rendered its Decision[19] in Civil Case No. 9954, which contained the following decretal portion:

> WHEREFORE, Premises Considered, judgment is rendered ordering the defendants to pay the plaintiff the following amounts, to wit:
>
> 1. The sum of 1,456,000 pesos plus interest thereon at the legal rate commencing from the time the complaint was filed in court until such time such amount has been paid in full;
>
> 2. The sum of 10,000 pesos as litigation expenses; and
>
> 3. The sum of 25,000 pesos as attorney's fees.
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> The defendants shall pay the costs of suit.
>
> Needless to say, the counterclaim in the Answer is Dismissed.
>
> SO ORDERED.[20]

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15 *Rollo*, p. 119.

16 Sec. 4. Hearing of motion.
Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

17 *Rollo*, pp. 120-121.

18 Records, p. 213.

19 *Rollo*, pp. 124-126; penned by Judge Pedro R. Soriao.

20 Id. at 126.

The trial court essentially held that petitioners, in their Answer, admitted that they entered into transactions with the respondent for the delivery of paint and construction materials, which remained unpaid; that from the Acknowledgment, Exhibit "A," signed by Fernando and duly presented, authenticated, and identified by respondent during trial, petitioners admitted that their unpaid obligation – including interest – amounted to ₱1,456,000.00; and that petitioners' plea for reformation has no basis.

Petitioners filed their Motion for Reconsideration,[21] arguing that the trial court should not have pre-empted CA-G.R. SP No. 93889, and instead should have awaited the resolution thereof; that the Acknowledgment was signed by Fernando alone, and thus the judgment should not bind his co-defendant and herein petitioner Ma. Elena Santos; that petitioners' liability has not been established since no delivery receipts, invoices and statements of account were presented during trial to show delivery of paint and construction materials; that respondent was unable to present the original of the Acknowledgment, which puts the Decision of the trial court – declaring that the original thereof was presented and authenticated by respondent – in serious doubt; and that there is no evidentiary basis to hold petitioners liable for ₱1,456,000.00.

In an Order[22] dated August 8, 2006, the trial court denied petitioners' Motion for Reconsideration.

The Assailed Court of Appeals Decision

Petitioners interposed an appeal with the CA. Docketed as CA-G.R. CV No. 87935, the ruling in the appeal is the subject of the present Petition. Petitioners claimed that the trial court erred in allowing respondent to present her evidence *ex parte*; the Acknowledgment has not been authenticated; the adjudged liability in the amount of ₱1,456,000.00 was not sufficiently proved by respondent, as she failed to present receipts and statements of account which would show the true amount of their obligation, including interest; the trial court based its findings on erroneous conclusions, assumptions and inferences; and the trial court erred in declaring them to have waived their right to present evidence.

Meanwhile, in CA-G.R. SP. No. 93889, the CA issued its Decision[23] dated March 30, 2007, dismissing petitioners' *certiorari* petition and sustaining the trial court's denial of their demurrer. The CA held that petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment; consequently, 1) its genuineness and due execution are deemed

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21 Id. at 127-130.

22 Id. at 135.

23 Id. at 178-189; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

admitted, 2) there was thus no need to present the original thereof, and 3) petitioners' liability was sufficiently established.[24] The CA added that under the circumstances, *certiorari* was not the proper remedy; petitioners should have gone to trial and awaited the trial court's Decision, which they could appeal if adverse. The Decision became final and executory on April 27, 2007.[25]

On September 27, 2007, the CA issued the herein assailed Decision in CA-G.R. CV No. 87935, which held as follows:

> WHEREFORE, the instant appeal is DENIED and consequently DISMISSED for lack of merit.
>
> SO ORDERED.[26]

The CA held that in their Answer, petitioners admitted that they owed respondent, albeit to the extent of ₱600,000.00; this judicial admission of liability required no further proof. And with this admission of liability, the Acknowledgment which was duly authenticated and formally offered in evidence was sufficient to establish their liability, and no further proof in the form of receipts and statements of account was required. The appellate court stated that Fernando's categorical admission of liability as contained in the Acknowledgment as well as petitioners' admissions in their Answer sufficed. It held further that respondent was competent to testify on the Acknowledgment as she was a signatory therein.

The CA likewise held that since they failed to oppose the Acknowledgment in the court below as a result of their having waived their right to present evidence, petitioners cannot now belatedly question the document. Moreover, their claim of a lesser liability in the amount of ₱600,000.00 remained to be plain unsubstantiated allegations as a result of their failure to refute respondent's evidence and present their own.

Finally, the CA held that petitioners were not deprived of due process during trial; on the contrary, they were afforded sufficient opportunity to participate in the proceedings by way of constant strict reminders by the court and several continuances, but they failed to take part in the proceedings.

Petitioners moved to reconsider, but in the second assailed May 23, 2008 disposition, the appellate court stood its ground. Thus, the instant Petition seeking a reversal of the assailed CA dispositions and the dismissal of the Complaint in

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[24] Citing *The Consolidated Bank & Trust Corporation v. Del Monte Motor Works, Inc.*, 503 Phil. 103, 118 (2005); *Asia Banking Corporation v. Walter E. Olsen & Co.*, 48 Phil. 529, 532 (1925).

[25] *Rollo*, p. 238; Entry of Judgment in CA-G.R. SP. No. 93889.

[26] Id. at 55.

Civil Case No. 9954.

Issues

Petitioners now raise the following issues for the Court's resolution:

IN THE RESOLUTION OF THE COURT OF APPEALS, THE ARGUMENT IN PETITIONERS' MOTION FOR RECONSIDERATION THAT RESPONDENT FAILED TO PRODUCE AND PRESENT THE ORIGINAL COPY OF THE ACKNOWLEDGMENT RECEIPT EXHIBIT "A" WHICH IS A VIOLATION OF THE BEST EVIDENCE RULE, WAS NOT ACTED UPON AND CONSIDERED "REHASH".

THE COURT OF APPEALS[27] FOUND THE NEED FOR RECEIPTS OF STATEMENTS OF ACCOUNT TO BE PRESENTED REFLECTING THE ACTUAL OBLIGATION OF PETITIONERS IN ITS DECISION DATED JULY 20, 2004 AND THUS SET ASIDE AND REMANDED TO THE COURT *A QUO* THE CASE FOR FURTHER PROCEEDINGS BUT THE SAME WAS COUNTERMANDED IN THE ASSAILED DECISION.

CONTRARY TO THE FINDINGS OF THE COURT OF APPEALS, PETITIONERS DID NOT ADMIT IN THEIR ANSWER THAT THEY ARE INDEBTED TO RESPONDENT IN THE AMOUNT OF ₱1,456,000.00.

THE COURT OF APPEALS FAILED TO RULE ON THE ABSENCE OF ANY RECORD OF THE PROCEEDINGS OF THE PRE-TRIAL CONFERENCE HELD ON SEPTEMBER 26, 2005.
THE COURT OF APPEALS SHOULD HAVE SERIOUSLY CONSIDERED TACKLING THE ISSUE OF PRESUMPTIONS, INFERENCES, AND MISCONCEPTION OF FACTS USED BY THE COURT *A QUO* [IN ARRIVING AT] ITS FINDINGS AND CONCLUSIONS.

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[27] Previously, petitioners were declared in default via an April 19, 2001 Order of the trial court, and thereafter the trial court proceeded to receive respondent's evidence *ex parte*. During the taking of respondent's evidence, the original copy of the Acknowledgment was authenticated, marked, and offered in evidence. Thereafter, on May 11, 2001, the trial court rendered a Decision finding petitioners liable, thus:

> Finding the foregoing evidence clearly preponderant and clearly established the plaintiff's claim, decision is hereby rendered in favor of the plaintiff and against the defendant. The defendant is hereby ordered to pay plaintiff the sum of ₱1,456,000.00 representing his principal obligation with legal interest thereon from the filing of the complaint and to pay 5% of the principal obligation as attorney's fees. Costs against the defendant.
>
> SO ORDERED. (Records, p. 64; penned by Judge Vladimir B. Brusola.)

Petitioners appealed the decision to the CA, via CA-G.R. CV No. 71187. On July 20, 2004, the CA issued a Decision (Id. at 78-88; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino) setting aside the trial court's May 11, 2001 Decision and ordering the remand of the case for the conduct of further proceedings. The CA held among others that:

> Finally, We find the defense relied upon by defendants-appellants meritorious, necessitating in fact a full-blown trial. Plaintiff-appellee failed to present adequate proofs, such as receipts or statement of account, reflecting the actual amount of the obligation and interest thereon, if any. Had the trial court lifted the order of default upon defendants-appellants' motion for reconsideration and allowed them to present their evidence, the issues regarding the correct amount of the obligation and the interest on such debt would have been properly threshed out. Judges, as a rule, should avoid issuing default orders that deny litigants the chance to be heard. They must give the litigants every opportunity to present their conflicting claims on the merits of the controversy, avoiding, as much as possible any resort to procedural technicalities. (Id. at 87)

> PETITIONERS WERE NOT DULY NOTIFIED OF THE NOVEMBER 8, 2005 HEARING IN VIOLATION OF SECTIONS 4 AND 5 [OF RULE 15] OF THE RULES OF COURT WHICH THE COURT OF APPEALS FAILED TO RULE.
>
> PETITIONERS HAVE BEEN DEPRIVED OF THEIR DAY IN COURT WHEN THEY WERE CONSIDERED TO HAVE WAIVED THEIR RIGHT TO PRESENT EVIDENCE AND THE CASE SUBMITTED FOR DECISION, THE CONTRARY RULING OF THE COURT OF APPEALS NOTWITHSTANDING.[28]

Petitioners' Arguments

Petitioners, in their Petition and Reply,[29] assert that during the proceedings below, only a photocopy of the Acknowledgment was presented and identified by respondent even as the original was not lost, the same having been made part of the record of the case when respondent's evidence was first presented ex *parte*.[30] For this reason, they argue that the photocopy presented and offered in evidence is inadmissible and could not be the basis for arriving at a finding of liability on their part, pursuant to the best evidence rule.

Petitioners further point out that in the first CA disposition, specifically in CA-G.R. CV No. 71187, the appellate court's Thirteenth Division ruled that in establishing petitioners' pecuniary liability, receipts and statements of account reflecting the actual amount of their obligation and interest thereon were necessary. Later on, in CA-G.R. CV No. 87935, the same division of the CA made a complete turnaround, declaring that receipts and statements of account were no longer necessary. For petitioners, this retraction by the CA was irregular.

Petitioners add that the pre-trial conference in Civil Case No. 9954 is a sham, as there are no records to show that it was ever conducted. Consequently, this irregularity renders the proceedings below – including the assailed judgment – null and void. They add that the trial court irregularly proceeded to receive respondent's evidence *ex parte* on November 8, 2005 despite lack of notice of hearing.

Next, petitioners point out inconsistencies and erroneous assumptions made by the appellate court which formed the basis of its decision, such as Ma. Elena's undue inclusion in the judgment of liability, when it is evident from the Acknowledgment that it was executed and signed by Fernando alone.

Finally, petitioners submit that in denying a continuance of the March 20,

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28 *Rollo*, pp. 19-20.
29 Id. at 246-256.
30 See Footnote 27.

2006 hearing and declaring them to have waived their right to present evidence, the trial court deprived them of their day in court.

Respondent's Arguments

In her Comment,[31] respondent counters that the Petition presents no valid cause for the Court's exercise of its power of review; that the issues raised therein have been duly taken up and conclusively resolved by the CA; that with the finality of the Decision in CA-G.R. SP No. 93889, petitioners may no longer raise any issue pertaining to the Acknowledgment, the genuineness and due execution of which they are considered to have admitted; and that with the resolution by the CA of the issues revived in the Petition, petitioners are guilty of forum shopping.

Respondent adds that petitioners are bound by the proceedings taken during the pre-trial conference, and may not pretend to be ignorant of the hearing dates agreed upon and set by the trial court. Respondent argues that petitioners may not claim to be oblivious of the pre-trial conference itself, since their representative was present all throughout the proceedings, and a pre-trial order was issued thereafter which contained the matters taken up during pre-trial and the hearing dates scheduled by the court.

Our Ruling

The Court denies the Petition.

Respondent's failure to present the original copy of the Acknowledgment during the taking of her testimony for the second time, and the presentation of a mere photocopy thereof at said hearing, does not materially affect the outcome of the case. It was a mere procedural inadvertence that could have been cured and did not affect petitioners' cause in any manner. As conceded by them and as held by the CA, the original exists and was made part of the records of the case when respondent's evidence was first taken. Though respondent now claims that she had lost the original, the CA proclaimed that the document resides in the record. This would explain then why respondent cannot find it in her possession; it is with the court as an exhibit. Besides, it evidently appears that there is no question raised on the authenticity and contents of the photocopy that was presented and identified in court; petitioners merely insist that the photocopy is inadmissible as a result of respondent's failure to present the original, which they nevertheless admit to exist and is found and included in the record of the case.

While it is a basic rule of evidence that the original copy prevails over a

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[31] *Rollo*, pp. 204-215.

mere photocopy,[32] there is no harm if in a case, both the original and a photocopy thereof are authenticated, identified and formally offered in evidence by the party proponent.

More to the point is the fact that petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment in their Answer. The effect of this is that the genuineness and due execution of the Acknowledgment is deemed admitted. "By the admission of the genuineness and due execution [of such document] is meant that the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Hence, such defenses as that the signature is a forgery x x x; or that it was unauthorized x x x; or that the party charged signed the instrument in some other capacity than that alleged in the pleading setting it out x x x; or that it was never delivered x x x, are cut off by the admission of its genuineness and due execution."[33]

"There is no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party."[34] With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is "valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into."[35] The absence of rebutting evidence occasioned by petitioners' waiver of their right to present evidence renders the Acknowledgment as the best evidence of the transactions between the parties and the consequential indebtedness incurred.[36] Indeed, the effect of the admission is such that "a *prima facie* case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitles him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant."[37]

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32 See *Mangahas v. Court of Appeals,* 588 Phil. 61 (2008); *G & M Philippines, Inc. v. Cuambot*, 537 Phil. 709 (2006).

33 *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 417-418 (2006), citing *Hibberd v. Rohde and McMilian*, 32 Phil. 476, 478-479 (1915).

34 *Chua v. Court of Appeals*, G.R. No. 88383, February 19, 1992, 206 SCRA 339, 346.

35 *Spouses Reyes v. Court of Appeals*, 432 Phil. 1052, 1061 (2002).

36 See *Sagun v. Sunace International Management Services, Inc*., G.R. No. 179242, February 23, 2011, 644 SCRA 171.

37 *Citibank, N.A. v. Sabeniano*, supra at 418.

However, as correctly argued by petitioners, only Fernando may be held liable for the judgment amount of ₱1,456,000.00, since Ma. Elena was not a signatory to the Acknowledgment. She may be held liable only to the extent of ₱600,000.00, as admitted by her and Fernando in paragraph 5 of their Answer; no case against her may be proved over and beyond such amount, in the absence of her signature and an acknowledgment of liability in the Acknowledgment. The rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to the document.[38]

As for petitioners' claim that in CA-G.R. CV No. 87935, the same division of the CA made a complete turnaround from its original pronouncement in CA-G.R. CV No. 71187 – thus doing away with the requirement of presenting receipts and statements of account which it originally required in the latter case, the Court finds no irregularity in this. The admission of liability resulting from petitioners' admission of indebtedness in their Answer and other pleadings,[39] their failure to specifically deny under oath the genuineness and due execution of the Acknowledgment, as well as their waiver of their right to present evidence – all these did away with the necessity of producing receipts and statements of account which would otherwise be required under normal circumstances.

On the claim that they were denied their day in court, the Court notes that despite reminders and admonitions by the trial court, petitioners caused several continuances of trial, which understandably prompted the trial court to finally deny their March 15, 2006 motion to reset the scheduled March 20 hearing and declare a waiver of their right to present evidence. Thus, as found by the CA,

> - In its September 26, 2005 Pre-Trial Order, the trial court fixed the hearing dates with a firm declaration that the same "shall be strictly followed and all postponements made by the parties shall be deducted from such party's allotted time to present evidence.
>
> - When plaintiff-appellee finished her presentation of evidence ahead of schedule, the appellants were again advised of their schedule for presentation of evidence – i.e., December 6 and 13, 2005 and January 9 and 23 and February 6, 2006. Despite said schedule, the appellants failed to appear in court.
>
> - On January 9, 2006, the lower court reiterated the scheduled hearing set on January 26, 2006 and included February 20, 2006 as an additional hearing date.
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> - Instead of presenting their evidence, the appellants filed a Demurrer to Evidence on January 17, 2006 which, however, was denied by the trial court in its Order dated January 26, 2006.

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38 *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701, 708.
39 *Rollo*, p. 232.

> - On February 20, 2006, the trial court again allowed another hearing date – March 20, 2006 – to afford the appellants added opportunity to present their evidence.
>
> The foregoing clearly show that not only were appellants given an opportunity to be heard, an added mileage in due process was extended to them by the trial court.[40]

Petitioners submit further that the trial court's subsequent denial of their motion for continuance of the March 20, 2006 hearing was improper. Yet again, the Court does not subscribe to this view. Petitioners filed their motion to reset the March 20, 2006 previously scheduled hearing, but the trial court did not act on the motion. Instead of attending the March 20, 2006 hearing, petitioners' counsel proceeded to absent himself and attended the supposed hearing of another case. This was improper. As we have held before,

> [A] party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court or on the generosity of the adverse party. x x x
>
> [A]n attorney retained in a case the trial of which is set for a date on which he knows he cannot appear because of his engagement in another trial set previously on the same date, has no right to presume that the court will necessarily grant him continuance. The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney, If the client, having full knowledge of all the facts, still retain[s] the attorney, he assumes the risk himself and cannot complain of the consequences if the postponement is denied and finds himself without attorney to represent him at the trial.[41]

The grant or denial of a motion for postponement rests on the court's sound discretion; it is a matter of privilege, not a right. "A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party."[42]

On the other questions raised by petitioners, specifically that the pre-trial

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40 *Rollo*, pp. 54-55.

41 *Gutierrez v. Medel*, 114 Phil. 1050, 1054 (1962), citing I Moran, Comments on the Rules of Court, 1952 Ed., p. 652; *Sunico v. Villapando*, 14 Phil. 352 (1909); and *Linis v. Rovira*, 61 Phil. 137 (1935). See also *Secretary of Finance v. Agana*, 159 Phil. 89 (1975); *Dimayuga v. Dimayuga*, 96 Phil. 859 (1955); and *Siojo v. Tecson*, 88 Phil. 531 (1951).

42 The *Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010, 630 SCRA 607, 619.

conference is a sham for lack of records of the proceedings, and that the November 8, 2005 hearing where respondent's evidence was taken ex *parte* was irregular for lack of a notice of hearing – the Court finds them to be without merit. It is evident that a pre-trial conference was held, and that petitioners' representative was present therein; moreover, the proceedings were covered by the required pre-trial order, which may itself be considered a record of the pre-trial.[43] In said order, the November 8, 2005 pre-scheduled hearing was particularly specified.[44] Thus, from the very start, petitioners knew of the November 8 hearing; if they failed to attend, no fault may be attributed to the trial court.

WHEREFORE, the Petition is **DENIED**. The September 27, 2007 Decision and May 23, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 87935 are **AFFIRMED**, with **MODIFICATION** in that petitioner Ma. Elena Santos is held liable for the principal and interest only to the extent of ₱600,000.00.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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[43] Under Rule 18, on Pre-Trial, it is provided that:

Sec. 7. Record of pre-trial.

The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

See also *LCK Industries, Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 647-648; and *Alarcon v. Court of Appeals*, 380 Phil. 678, 698 (2000), where it was held that "[a]ll of the matters taken up during the pre-trial, including the stipulation of facts and the admissions made by the parties are required to be recorded in a pre-trial order."

[44] *Rollo*, p. 106.

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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