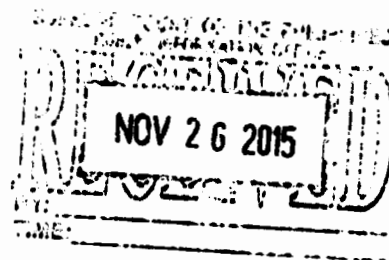




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

DOMINADOR M. APIQUE,
 Petitioner,

G.R. No. 205705

Present:

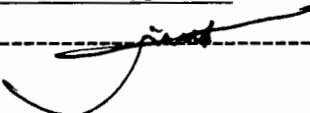
- versus -

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

EVANGELINE APIQUE
FAHNENSTICH,
 Respondent.

Promulgated:
AUG 05 2015

X-----X



DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated July 31, 2012 and the Resolution³ dated January 17, 2013 of the Court of Appeals, Cagayan de Oro City (CA) in CA-GR. CV No. 00740-MIN, which set aside the Decision⁴ dated January 25, 2006 of the Regional Trial Court of Davao City, Branch 16 (RTC) dismissing Civil Case No. 29,122-02 and, instead, ordered petitioner Dominador M. Apique (Dominador) to return to respondent Evangeline Apique Fahnenstich (Evangeline) the amount of ₱980,000.00, plus six percent (6%) interest per annum (p.a.) reckoned from the filing of the complaint up to the finality of the decision and, thereafter, twelve percent (12%) interest p.a. on the total amount demanded until its full satisfaction.

¹ *Rollo*, pp. 10-19.

² *Id.* at 21-35. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo T. Lloren and Jhosep Y. Lopez concurring.

³ *Id.* at 36-37. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting concurring.

⁴ Records, pp. 212-215. Penned by Presiding Judge Emmanuel C. Carpio.

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The Facts

Dominador and Evangeline are siblings who used to live with their parents at Babak, Island Garden City of Samal, Davao, until Evangeline left for Germany to work sometime in 1979.⁵ On August 2, 1995, Evangeline executed General⁶ and Special Powers of Attorney⁷ constituting Dominador as her attorney-in-fact to purchase real property for her, and to manage or supervise her business affairs in the Philippines.⁸

As Evangeline was always in Germany, she opened a joint savings account on January 18, 1999 with Dominador at the Claveria Branch of the Philippine Commercial International Bank (PCI Bank) in Davao City, which later became Equitable PCI Bank (EPCIB), and now Banco de Oro, under Savings Account No. 1189-02819-5 (subject account).⁹

On February 11, 2002, Dominador withdrew the amount of ₱980,000.00 from the subject account and, thereafter, deposited the money to his own savings account with the same bank, under Savings Account No. 1189-00781-3. It was only on February 23, 2003 that Evangeline learned of such withdrawal from the manager of EPCIB. Evangeline then had the passbook updated, which reflected the said withdrawal. She likewise discovered that Dominador had deposited the amount withdrawn to his own account with the same bank and that he had withdrawn various amounts from the said account.¹⁰

Evangeline demanded the return of the amount withdrawn from the joint account, but to no avail. Hence, she filed a complaint¹¹ for sum of money, damages, and attorney's fees, with prayer for preliminary mandatory and prohibitory injunction and temporary restraining order (TRO) against Dominador before the RTC, docketed as Civil Case No. 29,122-02, impleading EPCIB as a party defendant.

In her complaint,¹² Evangeline claimed to be the sole owner of the money deposited in the subject account, and that Dominador has no authority to withdraw the same. On the other hand, she alleged that EPCIB violated its banking rules when it allowed the withdrawal without the presentation of the passbook. She also prayed for a TRO to enjoin EPCIB from allowing any withdrawal from the subject account, which was granted by the Executive Judge on May 7, 2002.¹³

⁵ *Rollo*, pp. 12 and 21.

⁶ Records, p. 160.

⁷ Id. at 158-159.

⁸ *Rollo*, p. 22.

⁹ Id. See also records, p. 2.

¹⁰ Id.

¹¹ Records, pp. 2-7.

¹² Filed on May 7, 2002. Id.

¹³ *Rollo*, pp. 22-23.

In his answer,¹⁴ Dominador asserted, among others, that he was authorized to withdraw funds from the subject account to answer for the expenses of Evangeline's projects, considering: (a) that it was a joint account, and (b) the general and special powers of attorney executed by Evangeline in his favor. By way of counterclaim, he sought payment of moral and exemplary damages, attorney's fees, litigation expenses, and costs of suit. EPCIB, for its part, denied having violated its own banking rules and regulations, contending that the account in question was an "OR" account such that any of the account holders may transact without the signature of the other. It also pointed out that "no passbook" transactions were allowed if the following could be verified, namely: (a) technicalities of documents, (b) identity of payee, (c) authenticity of signature/s, and (d) sufficiency of funds.¹⁵ In the course of the proceedings, Evangeline and EPCIB filed a joint motion to drop the latter as party defendant, which the RTC granted in an Order¹⁶ dated April 5, 2004.¹⁷

During the trial, Dominador claimed that the money withdrawn from the subject account belonged to him, explaining that he had contributed an initial deposit of ₱100,000.00¹⁸ and that Evangeline's common-law husband, Holgar Schwarzfeller (Holgar), had also deposited a total amount of ₱900,000.00¹⁹ pursuant to the latter's verbal promise to compensate him for his services as administrator/manager of the couple's business and properties in the amount of ₱1,000,000.00,²⁰ which his sister, Marietta Apique (Marietta), corroborated.²¹

The RTC Ruling

In a Decision²² dated January 25, 2006, the RTC ruled in favor of Dominador and dismissed the complaint. It held that Dominador may validly withdraw money from the subject account even without Evangeline's consent, considering that: (a) it was a joint "OR" account, and (b) the reason for the withdrawal, *i.e.*, as compensation for his services as administrator of the business affairs of Evangeline. As such, it declared the February 11, 2002 withdrawal in the amount of ₱980,000.00 to be a valid transaction. However, it dismissed Dominador's counterclaims for failure to show that Evangeline acted with bad faith in filing the complaint.

Aggrieved, Evangeline filed an appeal before the CA.²³

¹⁴ See Answer with Special Affirmative Defenses with Counterclaim and Damages; records, pp. 20-24.

¹⁵ *Rollo*, pp. 23-24.

¹⁶ Records, p. 123.

¹⁷ *Rollo*, p. 24.

¹⁸ *Id.* at 23.

¹⁹ TSN, May 24, 2004, pp. 9-12.

²⁰ *Rollo*, p. 23.

²¹ Records, p. 214.

²² *Id.* at 212-215.

²³ See Plaintiff-Appellant's Brief; CA *rollo*, pp. 16-28.

The CA Ruling

In a Decision²⁴ dated July 31, 2012, the CA reversed and set aside the RTC's ruling and, instead, ordered Dominador to return to Evangeline the amount of ₱980,000.00, plus interest at six percent (6%) p.a. reckoned from the filing of the complaint up to the finality of the decision and, thereafter, an additional twelve percent (12%) p.a. interest on the total amount demanded until its full satisfaction.

The CA found that Evangeline was able to establish her case by preponderance of evidence.²⁵ In so ruling, it held that since the subject account is a joint "OR" account, and as such, Dominador is not required to present any authorization from his co-depositor every time he transacts with the bank, nonetheless, the nature of the said account did not give him unbridled license to withdraw any amount any time he wants, noting that his authority to withdraw was still subject to Evangeline's prior approval considering the purpose for which the account was opened.²⁶ It rejected Dominador's claim that the money in the subject account, or at least half of it, belonged to Holgar, and that the amount withdrawn was part of the compensation promised by the latter, for being bare, self-serving, and unsubstantiated allegations.²⁷

Dominador moved for reconsideration²⁸ but the same was denied in a Resolution²⁹ dated January 17, 2013; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not Evangeline is entitled to the return of the amount of ₱980,000.00 Dominador withdrew from their joint savings account with EPCIB, plus legal interest thereon.

The Court's Ruling

The petition is partly meritorious.

At the outset, the Court notes that the arguments raised herein necessarily require a reevaluation of the parties' submissions and the CA's factual findings, which is generally proscribed in a petition for review on

²⁴ *Rollo*, pp. 21-35.

²⁵ *Id.* at 33.

²⁶ *Id.* at 26 and 28.

²⁷ *Id.* at 32.

²⁸ See Motion for Reconsideration for the Defendant-Appellee Dominador M. Apique; *CA rollo*, pp. 142-150.

²⁹ *Rollo*, pp. 36-37.

certiorari because: (a) a Rule 45 petition resolves only questions of law, not questions of fact; and (b) factual findings of the CA are generally conclusive on the parties and are, therefore, not reviewable by this Court. By way of exception, however, the Court resolves factual issues when the findings of the RTC differ from those of the CA,³⁰ as in this case.

A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities.³¹ Under such setup, the depositors are joint owners or co-owners of the said account,³² and their share in the deposits shall be presumed equal, unless the contrary is proved, pursuant to Article 485 of the Civil Code, which provides:

Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved. (Emphasis supplied)

The common banking practice is that regardless of who puts the money into the account, each of the named account holder has an undivided right to the entire balance,³³ and any of them may deposit and/or withdraw, partially or wholly, the funds without the need or consent of the other,³⁴ during their lifetime.³⁵ Nevertheless, as between the account holders, their right against each other may depend on what they have agreed upon, and the purpose for which the account was opened and how it will be operated.³⁶

In this case, there is no dispute that the account opened by Evangeline and Dominador under Savings Account No. 1189-02819-5 with EPCIB was a joint “OR” account. It is also admitted that: (a) the account was opened for a specific purpose, *i.e.*, to facilitate the transfer of needed funds for Evangeline’s business projects;³⁷ and (b) Dominador may withdraw funds therefrom “*if*”³⁸ there is a need to meet Evangeline’s financial obligations arising from said projects.³⁹ Hence, while Dominador is a co-owner of the subject account *as far as the bank is concerned* – and may, thus, validly

³⁰ See *Dela Cruz v. Hermano*, G.R. No. 160914, March 25, 2015.

³¹ Philippine Deposit Insurance Corporation. Definition of Joint Accounts, <<http://www.pdic.gov.ph/index.php?nid1=5&nid2=7>> (last visited July 31, 2015).

³² *Rivera v. Peoples Bank and Trust Co.*, 73 Phil. 546, 547 (1942).

³³ See Webster’s New World Law Dictionary, 2010 Ed., New Jersey, cited in <<http://www.yourdictionary.com/joint-account>> (last visited July 31, 2015).

³⁴ See Farlex Financial Dictionary, 2012 Ed., cited in <<http://financial-dictionary.thefreedictionary.com/Joint+Account>> (last visited July 31, 2015).

³⁵ *Rivera v. Peoples Bank and Trust Co.*, supra note 32.

In case of death of one of the account holders, a BIR certification that estate taxes have been paid is required to be presented before banks having knowledge of the death of such depositor can allow withdrawal from the decedent’s bank accounts, including joint accounts, pursuant to Section 97 of the National Internal Revenue Code.

³⁶ <<http://www.legalmatch.com/law-library/article/joint-bank-accounts.html>> (last visited July 31, 2015).

³⁷ See Dominador’s answer admitting paragraph 4 of Evangeline’s complaint; records, pp. 3 and 20.

³⁸ *Id.* at 21.

³⁹ *Id.*

deposit and/or withdraw funds without the consent of his co-depositor, Evangeline – *as between him and Evangeline*, his **authority to withdraw, as well as the amount to be withdrawn, is circumscribed by the purpose for which the subject account was opened.**

Under the foregoing circumstances, Dominador's right to obtain funds from the subject account was, thus, conditioned on the necessity of funds for Evangeline's projects. Admittedly, at the time he withdrew the amount of ₱980,000.00 from the subject account, there was no project being undertaken for Evangeline.⁴⁰ Moreover, his claim that the said amount belonged to him, as part of the compensation promised by Holgar for his services as administrator of the business affairs of Evangeline, was correctly rejected by the CA,⁴¹ considering the dearth of competent evidence showing that Holgar: (a) undertook to pay Dominador the amount of ₱1,000,000.00 for his services as administrator of Evangeline's various projects; and (b) remitted such amount to the subject account for the benefit of Dominador. Having failed to justify his right over the amount withdrawn, Dominador is liable for its return, as correctly adjudged by the CA.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Thus, the party who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense, i.e. an avoidance of the claim.⁴² Dominador miserably failed in this respect.

Corollarily, the Court cannot subscribe to Dominador's claim for payment of compensation as administrator of the business affairs of Evangeline based on the principle of *quantum meruit*,⁴³ which was not raised as an affirmative defense or counterclaim in his answer to the complaint. Settled is the rule that defenses which are not raised in the answer are deemed waived,⁴⁴ and counterclaims not set up in the answer shall be barred.⁴⁵

Nonetheless, the Court deems it proper to modify the amount to be returned to Evangeline, considering: (a) the unrefuted claim that Dominador contributed the amount of ₱100,000.00 to the joint account at the time it was

⁴⁰ TSN, August 26, 2004, p. 30.

⁴¹ *Rollo*, p. 32.

⁴² *Bank of the Phil. Islands v. Sps. Royeca*, 581 Phil. 188, 194 (2008).

⁴³ *Rollo*, p. 16.

⁴⁴ See Section 1, Rule 9 of the Rules of Court (Rules).

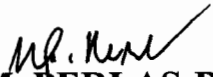
⁴⁵ See Section 2, Rule 9 of the Rules.

opened; and (b) the absence of controverting proof showing that the same had been withdrawn prior to February 11, 2002, when the contested withdrawal was made. Consequently, Dominador is entitled to the said amount which should be, therefore, deducted from amount to be returned.


Finally, the Court finds a need to partially modify the interest accruing from the finality of the Decision, which should be imposed at the lower rate of 6% p.a., and not 12% p.a. as imposed by the CA, in line with the amendment introduced by the Bangko Sentral ng Pilipinas Monetary Board in BSP-MB Circular No. 799,⁴⁶ series of 2013, and the ruling in *Nacar v. Gallery Frames*.⁴⁷

WHEREFORE, the petition is **DENIED**. The Decision dated July 31, 2012 and the Resolution dated January 17, 2013 of the Court of Appeals, Cagayan de Oro City in CA-G.R. CV No. 00740-MIN are hereby **AFFIRMED** with **MODIFICATION** directing petitioner Dominador M. Apique to return to respondent Evangeline Apique Fahnenstich the amount of ₱880,000.00, plus legal interest at six percent (6%) per annum, reckoned from the filing of the complaint on May 7, 2002, until full payment.

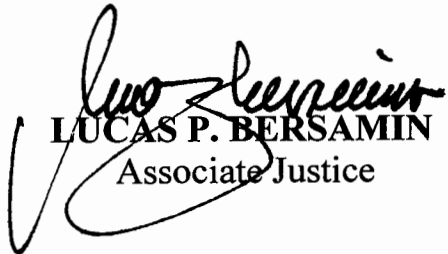
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

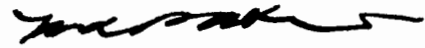

JOSE PORTUGAL PEREZ
Associate Justice

⁴⁶ Rate of interest in the absence of stipulation; dated June 21, 2013.

⁴⁷ G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

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