SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 13, 2019**, *which reads as follows:*

"G.R. No. 229463 (*Heirs of Rodolfo Nazario, represented by Minita Chico-Nazario, Roderick Nazario, Rommelious Nazario, and Karen Patricia N. Bouzaid v. Luisito Espinosa*). - Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated May 26, 2015 and Resolution[3] dated January 23, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 97791, which reversed and set aside the Order[4] dated August 5, 2011 of the Regional Trial Court of Manila, Branch 173 (RTC) in Civil Case No. 98-88946.

The Facts of the Case

This case stemmed from a Complaint[5] for sum of money filed by Luisito Espinosa (respondent), together with his manager, Joe Koizumi (Koizumi), against South Cotabato Provincial Governor Hilario de Pedro III (de Pedro) and boxing promoters Rodolfo V. Nazario (Rodolfo) and Joselito Mondejar (Mondejar; collectively defendants).

The records showed that on October 16, 1997, the parties entered into an Agreement[6] to hold the World Boxing Council World Featherweight Title bout, wherein Espinosa would defend his title against Carlos Rios (Rios) of Argentina, in Koronadal, South Cotabato on December 6, 1997.

Under the contract, respondent was entitled to a guaranteed purse of US$150,000.00 and training expenses of US$10,000.00. The contract also stipulated that by October 31, 1997, respondent would be paid

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1 *Rollo*, pp. 51-83.

2 Penned by Associate Justice Ramon A. Cruz, with Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison, concurring; id. at 8-36.

3 Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Sesinando E. Villon and Francisco P. Acosta, concurring; id. at 38-44.

4 Penned by Armado A. Yanga; id. at 427-431.

5 Id. at 162-166.

6 Id. at 185.

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US$50,000.00 representing one-third of the guaranteed purse, plus the US$10,000.00 training expenses, totalling US$60,000.00.

But with days to go before the scheduled fight, only US$29,651.00 had been paid by defendants, far from the stipulated US$60,000.00. In the weigh-in on December 5, 1997, a day before the event, defendants had not paid respondent the full amount of the purse, even though it was customary in the boxing business that the fighters be paid their purse in full right after the weigh-in.

On the eve of the fight or on December 6, 1997, the balance remained unpaid. Thus, defendants executed a Letter of Guarantee[7] promising to pay the balance of respondent's purse, US$130,349.00, on or before December 16, 1997.

At any rate, the scheduled fight pushed through and respondent knocked out Rios in their title fight. His victory notwithstanding, respondent was not paid the full amount of his purse based on the Agreement and the Letter of Guarantee. Despite repeated demands, defendants never paid respondent the balance of his prize money.

On May 26, 1998, respondent filed a case for sum of money with damages and attorney's fees against defendants before the RTC of Manila.

During the pendency of the case before the RTC, defendants filed numerous pleadings seeking the outright dismissal of the complaint.

Meanwhile, Rodolfo passed away on September 24, 2009. He was substituted by his estate and his heirs, namely: his wife, Minita Chico-Nazario, and his children, Roderick Nazario, Rommelious Nazario and Karen Patricia N. Bouzaid (petitioners).

Petitioners moved for the dismissal of the case through a Demurrer to Evidence[8] filed on March 14, 2011, alleging insufficiency of evidence based on the following grounds: (a) respondent failed to present any witness to prove his claim; and (b) the documentary evidence of respondent were inadmissible because they were not properly authenticated nor identified and were mere photocopies.

On August 5, 2011, the RTC granted the demurrer to evidence filed by petitioners and consequently dismissed the case for lack of merit.[9] The trial court held that the documents presented by respondent were insufficient evidence, and that the local promoters did not bind themselves to pay the purse guaranteed to respondent.

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7 Id. at 169.
8 Id. at 406-410.
9 Id. at 431.

Respondent filed a Motion for Reconsideration[10] but it was denied. Aggrieved, he appealed his case to the CA.

In a Decision[11] dated May 26, 2015, the CA granted the appeal and reversed and set aside the RTC decision. The CA ordered the estate of the deceased Rodolfo and his legal heirs to pay respondent the following: (a) US $130,349.00; (b) interest at the rate of twelve percent (12%) *per annum* from the date of judicial demand on May 25, 1998 until June 30, 2013; and c) interest at the rate of six percent (6%) *per annum* from July 1, 2013 until full satisfaction.

The CA sustained the documentary evidence submitted by respondent and ruled that the stipulations in it clearly bound Rodolfo as guarantor to pay the purse of respondent.

The cases against Mondejar and de Pedro were subsequently dismissed. As for Mondejar, the CA said it was established that he was not a signatory in the agreement and the letter of guarantee, thus, warranting the dismissal of the case against him. On the other hand, the CA absolved de Pedro for herein respondent's failure to prosecute the case against the former.

Petitioners filed a Motion for Reconsideration.[12] However, in a Resolution[13] dated January 23, 2017, the CA denied the motion but reiterated that the liability of the legal heirs of Rodolfo is limited only to the value of inheritance they received from him.

Undaunted, petitioners seek recourse to this Court contending that: (a) the agreement and letter of guarantee should not have been admitted into evidence because they had neither been properly authenticated nor identified by the contracting parties, and the exhibits are mere photocopies; (b) respondent failed to present any witness to prove his claims against Rodolfo; and c) they are not obliged to pay respondent because Rodolfo merely signed as an accommodation party because Koizumi and de Pedro had no domestic license to promote the fight.

The Court's Ruling

The petition lacks merit.

At the outset, the Court observed that the defense of Rodolfo in his Answer *Ad Cautelam*[14] to the complaint, wherein he made admissions and averred affirmative defenses can be denominated as confession and

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10 Id. at 202-209.
11 Supra note 2.
12 Id. at 479-507.
13 Supra note 3.
14 Id. at 210-224.

avoidance of liability under Section 5(b),[15] Rule 6 of the Rules of Court. Rodolfo admitted that he signed the agreement and the letter of guarantee but, nonetheless, claimed exemption from liability because he allegedly acted only as an accommodation party. In other words, the defense of being a mere accommodation party is a confession and an avoidance of the obligation.

It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts an affirmative allegation, petitioners have to prove their allegation with particularity, which must be ventilated in a full-blown trial on the merits. In this case, there is nothing on the records which could support a finding that Rodolfo was only an accommodation party especially with the fact that, instead of presenting their evidence, petitioners chose to file a demurrer to evidence.

In turn, the Court concurs with the decision of the CA holding that the genuineness and due execution of the Agreement dated October 16, 1997 and Letter of Guarantee dated December 6, 1997, were deemed admitted by Rodolfo under the parameters of Sections 7 and 8, Rule 8 of the Rules of Court, which provide:

> Sec. 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.
>
> Sec. 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 a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

Under Section 7, Rule 8 of the Rules of Court, a document is actionable when an action or defense is grounded upon such written

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[15] An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

instrument or document,[16] as in the instant case, where respondent's cause of action was solely based on agreement and the letter of guarantee. The provision is explicit in that there are two ways of pleading an actionable document, namely: (a) by alleging the substance of such written instrument in the pleading and attaching a copy thereof to the pleading; and (b) by copying the instrument in the pleading.[17]

The complaint of respondent in the present case complied with the first situation under paragraph (a). The complaint alleged the substance of the agreement and the letter of guarantee subject of the litigation and a copy of the documents were properly attached to the complaint as Annexes "A" and "B." No rule is more settled than that in an action based on a written instrument attached to the complaint, if the defendant fails to specifically deny under oath the genuineness and due execution of the instrument, the same is deemed admitted.[18]

It is uncontroverted that Rodolfo failed to deny under oath the documents. A reading of Rodolfo's Answer *Ad Cautelam* would show that he failed to specifically deny the execution of the agreement and the letter of guarantee under the parameters of the above-quoted rule. Rodolfo only objected to the documents on the ground of inadmissibility under the best evidence rule. By his own assertions, that he merely signed the documents as an accommodation party, Rodolfo thereby failed to controvert the existence of the documents, hence he impliedly admitted the same.

With Rodolfo's lack of denial under oath, his allegations amounted to an implied admission of the due execution and genuineness of the subject documents. This admission should have been considered by the trial court in resolving the demurrer to evidence. The trial court erred in finding that the agreement cannot be admitted, as Rodolfo's Answer[19] shows that he failed to specifically deny under oath the genuineness and due execution of the agreement and its concomitant documents. Therefore, it was not necessary for respondent to present further evidence to establish the due execution and authenticity of the agreement sued upon.

Accordingly, the lack of respondent's witness to testify in order to authenticate the same is, therefore, of no moment. While Section 22, Rule 132 of the Rules of Court requires that private documents be proved of their due execution and authenticity before they can be received in evidence, i.e., presentation and examination of witnesses to testify on this fact; in the present case, there is no need for proof of execution and authenticity with respect to the subject agreement because of Rodolfo's implied admission thereof.

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16 *Asian Construction and Devt. Corp. v. Mendoza*, 689 Phil. 553, 558 (2012).
17 *Imperial Textile Mills, Inc. v. Court of Appeals*, 262 Phil. 639, 642-643 (1990).
18 Id. at 642.
19 *Rollo*, pp. 363-379.

While the failure to deny the genuineness and due execution of an actionable document does not preclude a party from arguing against it by evidence of fraud, mistake, compromise, payment, statute of limitations, estoppel and want of consideration, nor bar a party from raising the defense in his answer or reply and prove at the trial that there is a mistake or imperfection in the writing, or that it does not express the true agreement of the parties, or that the agreement is invalid or that there is an intrinsic ambiguity in the writing, none of these defenses were adequately argued or proven during the proceedings of this case. [20] Rodolfo did not present any defense as his substitutes opted to file a demurrer to evidence.

Petitioners attempt to raise the defense that the Agreement and the letter of guarantee did not express the true agreement of the parties, because Rodolfo merely signed the subject documents to accommodate Koizumi and de Pedro, who had no local boxing license from the Games and Amusement Board to legally promote the subject title fight in their own names. However, this defense requires the presentation of evidence by petitioners as the agreement and the letter of guarantee do not show these alleged underlying accommodation agreements.

As correctly observed by the CA:

> The RTC and the defendants-appellees make it appear that this fact was stipulated on by the parties during the pre-trial held on August 31, 2004, as reflected in the Pre-Trial Order, to wit:
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> x x x
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> "2. That defendant Rodolfo Nazario signed an agreement dated October 16, 1997 to accommodate plaintiff Joe Koizumi and Gov. de Pedro for [they] had no domestic license to promote the fight."
>
> x x x
>
> Record shows, however, that Plaintiff-Appellant Luisito Espinosa moved for the deletion of the said paragraph in the Pre-Trial Order as there was no admission on his part, through counsel, that the signing of the October 16, 1997 Agreement was merely to accommodate. This motion was denied by the RTC, albeit erroneously.
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> x x x x
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> It is clear from the foregoing that when plaintiff-appellant's counsel ask[ed] Defendant-Appellee Nazario's counsel to stipulate on the fact that Defendant-Appellee

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[20] *Go Tong Electrical Supply Co., Inc. v. BPI Family Savings Bank, Inc.*, 762 Phil. 89, 100 (2015).

> Nazario signed the Agreement dated October 16, 1997, Defendant-Appellee Nazario was only willing to admit that he signed the same as an accommodation party. Plaintiff appellant's counsel never conceded that Defendant-Appellee Nazario indeed signed the said agreement as an accommodation party.
>
> There being no stipulation that Defendant-Appellee Nazario merely signed as an accommodation party, it remains a triable issue that should have been threshed out through a full-blown trial. However, instead of presenting their evidence, defendants-appellees chose to file a Demurrer to Evidence.[21]

This case has been pending for many years and the Court would like to put the whole matter to rest. The scheduled fight pushed through and respondent has not been given his prize money too long to be ignored. From the time of their agreement on October 16, 1997 to the present, it has already been 22 years but respondent has not received the full amount of the prize money due to him. Thus, the long delay entitles respondent to the payment of interest to compensate for the loss of income due to his unpaid earnings.

As to the rate of interest due thereon, however, in the absence of any stipulation as to interest in the agreement between the parties, We note that the same should be reduced from 12% *per annum* to 6% *per annum* from the time of demand, considering the fact that the obligation involved herein does not partake of a loan or forbearance of money.[22]

Lastly, to prevent future litigation in the enforcement of the award, the Court reiterates that Rodolfo's heirs are not personally responsible for the debts of their predecessor. The extent of liability of petitioners to respondent is limited to the value of the estate which they inherited from Rodolfo. In Our jurisdiction, "it is the estate or mass of the property left by the decedent, instead of the heirs directly, that becomes vested and charged with his rights and obligations which survive after his death." To rule otherwise would unduly deprive the petitioners of their properties.[23]

WHEREFORE, the petition is **DENIED**. The assailed Decision dated May 26, 2015 and Resolution dated January 23, 2017 of the Court of Appeals in CA-G.R. CV No. 97791 are hereby **AFFIRMED with MODIFICATION**. The petitioners are **ORDERED** to pay respondent the sum of US$130,349.00 plus interest at six percent (6%) *per annum* reckoned from May 26, 1998 until full payment thereof.

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21 *Rollo*, pp. 28-30.

22 *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales*, G.R. No. 225433, August 28, 2019.

23 *Planters Devt. Bank v. Sps. Lopez*, 720 Phil. 426, 449-450 (2013).

SO ORDERED." (**Leonen, *J.***, *on official business*; **Gesmundo, *J.***, *designated as Acting Chairperson of the Third Division per Special Order No. 2737*; **Lazaro-Javier, *J.***, *designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.*)

Very truly yours,

Misael D C Batt
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Deputy Division Clerk of Court
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The Presiding Judge
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Branch 173, Manila
(Civil Case No. 98-88946)

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