SUPREME COURT
SECOND DIVISION

BALDOMERO INCIONG, JR.,
***Petitioner*,**

-versus-

G.R. No. 96405
June 26, 1996

COURT OF APPEALS and PHILIPPINE BANK OF COMMUNICATIONS,
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

This is a Petition for Review on *Certiorari* of the Decision of the Court of Appeals affirming that of the Regional Trial Court of Misamis Oriental, Branch 18,[1] which disposed of Civil Case No. 10507 for collection of a sum of money and damages, as follows:

> "WHEREFORE, defendant BALDOMERO L. INCIONG, JR. is adjudged solidarily liable and ordered to pay to the plaintiff Philippine Bank of Communications, Cagayan de Oro City, the amount of FIFTY THOUSAND PESOS (P50,000.00), with interest thereon from May 5, 1983 at 16% per annum until fully paid; and 6% per annum on the total amount due, as liquidated damages or penalty from May 5, 1983 until fully paid; plus 10% of the total amount due for expenses of litigation and attorney's fees; and to pay the costs.
>
> The counterclaim, as well as the cross claim, are dismissed for lack of merit.
>
> SO ORDERED."

Petitioner's liability resulted from the promissory note in the amount of P50,000.00 which he signed with Rene C. Naybe and Gregorio D. Pantanosas on February 3, 1983, holding themselves jointly and severally liable to private respondent Philippine Bank of Communications, Cagayan de Oro City branch. The promissory note was due on May 5, 1983.

Said due date expired without the promissors having paid their obligation. Consequently, on November 14, 1983 and on June 8, 1984, private respondent sent petitioner telegrams demanding payment thereof.[2] On December 11, 1984 private respondent also sent by registered mail a final letter of demand to Rene C. Naybe. Since both obligors did not respond to the demands made, private respondent filed on January 24, 1986 a complaint for collection of the sum of P50,000.00 against the three obligors.

On November 25, 1986, the complaint was dismissed for failure of the plaintiff to prosecute the case. However, on January 9, 1987, the lower court reconsidered the dismissal order and required the sheriff to serve the summonses. On January 27, 1987, the lower court dismissed the case against defendant Pantanosas as prayed for by the private respondent herein. Meanwhile, only the summons addressed to petitioner was served as the sheriff learned that defendant Naybe had gone to Saudi Arabia.

In his answer, petitioner alleged that sometime in January 1983, he was approached by his friend, Rudy Campos, who told him that he was a partner of Pio Tio, the branch manager of private respondent in Cagayan de Oro City, in the falcata logs operation business. Campos also intimated to him that Rene C. Naybe was interested in the business and would contribute a chainsaw to the venture. He added that, although Naybe had no money to buy the equipment, Pio Tio had assured Naybe of the approval of a loan he would make with private respondent. Campos then persuaded petitioner to act as a "co-maker" in the said loan. Petitioner allegedly acceded but with the understanding that he would only be a co-maker for the loan of P5,000.00.

Petitioner alleged further that five (5) copies of a blank promissory note were brought to him by Campos at his office. He affixed his signature thereto but in one copy, he indicated that he bound himself only for the amount of P5,000.00. Thus, it was by trickery, fraud and misrepresentation that he was made liable for the amount of P50,000.00.

In the aforementioned decision of the lower court, it noted that the typewritten figure "-50,000-" clearly appears directly below the admitted signature of the petitioner in the promissory note.[3] Hence, the latter's uncorroborated testimony on his limited liability cannot prevail over the presumed regularity and fairness of the transaction, under Sec. 5 (q) of Rule 131. The lower court added that it was "rather odd" for petitioner to have indicated in a copy and not in the original, of the promissory note, his supposed obligation in the amount of P5,000.00 only. Finally, the lower court held that, even granting that said limited amount had actually been agreed upon, the same would have been merely collateral between him and Naybe and, therefore, not binding upon the private respondent as creditor-bank.

The lower court also noted that petitioner was a holder of a Bachelor of Laws degree and a labor consultant who was supposed to take due care of his concerns, and that, on the witness stand, Pio Tio denied having participated in the alleged business venture although he knew for a fact that the falcata logs operation was encouraged by the bank for its export potential.

Petitioner appealed the said decision to the Court of Appeals which, in its decision of August 31, 1990, affirmed that of the lower court. His motion for reconsideration of the said decision having been denied, he filed the instant petition for review on *certiorari*.

On February 6, 1991, the Court denied the petition for failure of petitioner to comply with the Rules of Court and paragraph 2 of Circular No. 1-88, and to sufficiently show that respondent court had committed any reversible error in its questioned Decision.[4] His Motion for the Reconsideration of the denial of his Petition was likewise denied with finality in the Resolution of April 24, 1991.[5] Thereafter, petitioner filed a motion for leave to file a second motion for reconsideration which, in the Resolution of May 27, 1991, the Court denied. In the same Resolution, the Court ordered the entry of judgment in this case.[6]

Unfazed, petitioner filed a motion for leave to file a motion for clarification. In the latter motion, he asserted that he had attached Registry Receipt No. 3268 to page 14 of the petition in compliance with Circular No. 1-88. Thus, on August 7, 1991, the Court granted his prayer that his petition be given due course and reinstated the same.[7]

Nonetheless, we fined the petition unmeritorious.

Annexed to the petition is a copy of an affidavit executed on May 3, 1988, or after the rendition of the decision of the lower court, by Gregorio Pantanosas, Jr., an MTCC judge and petitioner's co-maker in the promissory note. It supports petitioner's allegation that they were induced to sign the promissory note no the belief that it was only for P5,000.00, adding that it was Campos who caused the amount of the loan to be increased to P50,000.00.

The affidavit is clearly intended to buttress petitioner's contention in the instant petition that the Court of Appeals should have declared the promissory note null and void on the following grounds: (a) the promissory note was signed in the office of Judge Pantanosas, outside the premises of the bank; (b) the loan was incurred for the purpose of buying a second-hand chainsaw which cost only P5,000.00; (c) even a new chainsaw would cost only P27,500.00; (d) the loan was not

approved by the board or credit committee which was the practice, at it exceeded P5,000.00; (e) the loan had no collateral; (f) petitioner and Judge Pantanosas were not present at the time the loan was released in contravention of the bank practice, and (g) notices of default are sent simultaneously and separately but no notice was validly sent to him.[8] Finally, petitioner contends that in signing the promissory note, his consent was vitiated by fraud as, contrary to their agreement that the loan was only for the amount of P5,000.00, the promissory note stated the amount of P50,000.00.

The above-stated points are clearly factual. Petitioner is to be reminded of the basic rule that this Court is not a trier of facts. Having lost the chance to fully ventilate his factual claims below, petitioner may no longer be accorded the same opportunity in the abuse of discretion on the part of the court below. Had he presented Judge Pantanosas' affidavit before the lower court, it would have strengthened his claim that the promissory note did not reflect the correct amount of the loan.

Nor is there merit in petitioner's assertion that since the promissory note "is not a public deed with the formalities prescribed by law but a mere commercial paper which does not bear the signature ofattesting witnesses," parol evidence may "overcome" the contents of the promissory note.[9] The first paragraph of the parol evidence rule[10] states:

> "When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the content of the written agreement."

Clearly, the rule does not specify that the written agreement be a public document.

What is required is that agreement be in writing as the rule is in fact founded on "long experience that written evidence is so much more certain and accurate than that which rests in fleeting memory only, that it would be unsafe, when parties have expressed the terms of their contract in writing, to admit weaker evidence to control and vary

the stronger and to show that the parties intended a different contract from that expressed in the writing signed by them."[11] Thus, for the parol evidence rule to apply, a written contract need not by in any particular form, or be signed by both parties.[12] As a general rule, bills, notes and other instruments of a similar nature are not subject to be varied or contradicted by parol or extrinsic evidence.[13]

By alleging fraud in his answer,[14] petitioner was actually in the right direction towards proving that he and his co-makers agreed to a loan of P5,000.00 only considering that, where a parol contemporaneous agreement was the inducing and moving cause of the written contract, it may be shown by parol evidence.[15] However, fraud must be established by clear and convincing evidence, mere preponderance of evidence, not even being adequate.[16] Petitioner's attempt to prove fraud must, therefore, fail as it was evidenced only by his own uncorroborated and, expectedly, self-serving testimony.

Petitioner also argues that the dismissal of the complaint against Naybe, the principal debtor, and against Pantanosas, his co-maker, constituted a release of his obligation, especially because the dismissal of the case against Pantanosas was upon the motion of private respondent itself. He cites as basis for his argument, Article 2080 of the Civil Code which provides that:

> "The guarantors, even though they be solidary, are released from their obligation whenever by come act of the creditor, they cannot be subrogated to the rights, mortgages, and preferences of the latter."

It is to be noted, however, that petitioner signed the promissory note as a solidary co-maker and not as a guarantor. This is patent even from the first sentence of the promissory note which states as follows:

> "Ninety one (91) days after date, for value received, I/we, JOINTLY and SEVERALLY promise to pay to the PHILIPPINE BANK OF COMMUNICATIONS as its office in the City of Cagayan de Oro, Philippines the sum of FIFTY THOUSAND ONLY (P50,000.00) Pesos, Philippine Currency, together with interest at the rate of SIXTEEN (16) per cent per annum until fully paid."

A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation.[17] On the other hand, Article 2047 of the Civil Code states:

> "By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed, In such a case the contract is called a suretyship." (Emphasis supplied.)

While a guarantor may bind himself solidarily with the principal debtor, the liability of a guarantor is different from that of a solidary debtor. Thus, Tolentino explains:

> "A guarantor who binds himself in solidum with the principal debtor under the provisions of the second paragraph does not become a solidary co-debtor to all intents and purposes. There is a difference between a solidary co-debtor, and a fiador in solidum (surety). The later, outside of the liability he assumes to pay the debt before the property of the principal debtor has been exhausted, retains all the other rights, actions and benefits which pertain to him by reason of rights than those bestowed upon him in Section 4, Chapter 3, title I, Book IV of the Civil Code."[18]

Section 4, Chapter 3, Title I, Book IV of the Civil Code states the law on joint and several obligations. Under Art. 1207 thereof, when there are two or more debtors in one and the same obligation, the presumption is that obligation is joint so that each of the debtors is liable only for a proportionate part of the debt. There is a solidarily liability only when he obligation expressly so states, when the law so provides or when the nature of the obligation so requires.[19]

Because the promissory note involved in this case expressly states that the three signatories therein are jointly and severally liable, any

one, some or all of them may be proceeded against for the entire obligation.[20] The choice is left to the solidary creditor to determine against whom he will enforce collection.[21] Consequently, the dismissal of the case against Judge Pontanosas may not be deemed as having discharged petitioner from liability as well. As regards Nayve, suffice it to say that the court never acquired jurisdiction over him. Petitioner, therefore, may only have recourse against his co-makers, as provided by law.

WHEREFORE, the instant Petition for Review on *Certiorari* is here **DENIED** and the questioned Decision of the Court of Appeals is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Regalado, Puno, Mendoza and Torres, *JJ.*, concur.

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[1] Presided by Judge Senen C. Peñaranda.
[2] Exhs. D-1 & D.
[3] Exh. A.
[4] Rollo, p. 30.
[5] Ibid., p. 37.
[6] Ibid., p. 46.
[7] Ibid., p. 50.
[8] Petition, pp. 6-7.
[9] Petition, p. 9; Rollo, p. 14.
[10] Sec. 9, Rule 130, Rules of Court.
[11] FRANCISCO, THE RULES OF COURT OF THE PHILIPPINES, Vol. III, Part I, 1990 ed., p. 179.
[12] 32A C.J.S. 269.
[13] Ibid., at p. 251.
[14] Record, p. 38.
[15] FRANCISCO, supra, p. 193.
[16] Cu vs. Court of Appeals, G.R. No. 75504, April 2, 1991, 195 SCRA 647, 657 citing Carenan vs. Court of Appeals, G.R. No. 84358, May 31, 1989 and Centenera vs. Garcia Palicio, 29 Phil. 470 (1915).
[17] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, Vol. IV, 1991, ed., p. 217.
[18] Supra, Vol. V, 1992 ed., p. 502.
[19] Sesbreño vs. Court of Appeals, G.R. No. 89252, May 24, 1993, 222 SCRA 466, 481.

[20] Art. 1216, Civil Code; Ouano Arrastre Service, Inc. vs. Aleonar, G.R. No. 97664, October 10, 1991, 202 SCRA 619, 625.

[21] Dimayuga vs. Phil. Commercial & Industrial Bank, G.R. No. 42542, August 5, 1991, 200 SCRA 143, 148 citing PNB vs. Independent Planters Association Inc., L-28046, May 16, 1983, 122 SCRA 113.