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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**YOUNG BUILDERS
CORPORATION,**

Petitioner,

- versus -

BENSON INDUSTRIES, INC.,

Respondent.

G.R. No. 198998

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

Promulgated:

19 JUN 2019

M. Cabalag

x-----x

RESOLUTION

CAGUIOA, J.:

This is a petition for review on *certiorari*¹ (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner Young Builders Corporation (YBC) assailing the Decision² dated June 28, 2011 and Resolution³ September 14, 2011 of the Court of Appeals⁴ (CA) in CA-G.R. CEB-CV No. 02984, reversing the Decision⁵ dated November 21, 2008 of the Regional Trial Court, Branch 21, Cebu City (RTC) in Civil Case No. CEB-22526, and dismissing the complaint against Benson Industries, Inc. (BII).

Facts

The Decision of the CA states the facts as follows:

On 13 August 1998, plaintiff-appellee Young Builders Corporation (YBC for brevity) filed before the Regional Trial Court in Cebu City (RTC) a complaint for collection of sum of money against defendant-

¹ Rollo, pp. 3-26, excluding Annexes.

² Id. at 28-37. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Victoria Isabel A. Paredes concurring.

³ Id. at 61-64.

⁴ Twentieth and Nineteenth Divisions.

⁵ Rollo, pp. 96-102. Penned by Presiding Judge Eric F. Menchavez.

appellant Benson Industries, Inc. [(BII)]. In its complaint, YBC claimed that it was contracted by [BII] sometime in 1994 for the purpose of constructing [BII]'s commercial building located at Escario St., corner F. Ramos Extension, Cebu City, pursuant to an accomplishment billing basis. As of 18 May 1998, YBC alleged that it had accomplished works on the main contract amounting to Php54,022,551.39, of which only Php40,678,430 was paid by [BII] leaving a balance of Php13,344,121.39. In addition, [BII] required YBC to do extra works amounting to Php11,839,110.99 which, after deducting Php350,880 for the water cistern, resulted in a total collectible of Php24,832,352.38 both on the main contract and the extra works as per accomplishment billing dated 18 May 1998. However, despite demand, [BII] failed to pay its account constraining YBC to file the collection case.

In its Answer, [BII] admitted that it contracted YBC to construct the former's building but denied that it was on an accomplishment billing basis. On the contrary, [BII] averred that the construction was pursuant to a timetable with which YBC failed to comply. Objecting to YBC's monetary claims, [BII] asserted that YBC committed prior breaches in the agreement particularly the latter's delay and eventual abandonment of the construction as well as its defective and inferior workmanship and materials which unduly affected the usefulness and value of the building. [BII] also denied YBC's claim for extra works, maintaining that those were remedial not additional works. Even assuming that YBC still has a collectible, [BII] contended that the same has been offset against YBC's liability as a result of the latter's default and its substandard work. [BII] consequently prayed for the dismissal of the complaint.

After pre-trial, trial on the merits ensued. For the plaintiff-appellee, it presented its lone witness, architect Nelson Go Yu as the Vice President of the corporation, who testified on the material allegations in the complaint.

After YBC rested its case and formally offered its exhibits, [BII] filed a Demurrer to Evidence dated 12 March 2002 and a Supplemental Motion on Demurrer to Evidence dated 20 March 2002. YBC, in turn, filed its Opposition.

In an Order dated 16 July 2002, the RTC denied [BII]'s Demurrer to Evidence, ruling that there was an imperative need for [BII] to present countervailing evidence against YBC.

[BII] filed a Motion for Reconsideration but this was to no avail as evidenced by the court *a quo*'s Order dated 29 August 2002.

Subsequently, [BII] presented its evidence in chief. Five (5) witnesses took the witness stand, particularly: 1) Engr. Diego Bariquet, [BII]'s representative in the construction; 2) Frank Yap, [BII]'s Assistant Vice President; 3) Leonardo Guco, a liaison officer of [BII]; 4) Atty. Josh Carol Ventura, a representative of the Department of Trade and Industry (DTI); and 5) Ramon Abella, finance officer of the Dakay Group of Companies under which [BII] belongs.

On 21 November 2008, the RTC resolved the case in favor of YBC, thus:



“WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of the plaintiff and hereby orders the defendant to pay the plaintiff:

(a) the amount of Php24,832,352.38 plus interest at the legal rate from the filing of this case until the said amount shall have been fully paid;

(b) Php500,000.00 as attorney’s fees; and

(c) Php100,000.00 as litigation expenses.

SO ORDERED.”⁶

Aggrieved, [BII] filed [an] appeal [to the CA] assailing the RTC’s decision finding it liable to YBC. [BII] aver[red] that contrary to the court *a quo*’s finding, YBC never actually completed the construction of the building since YBC failed to substantiate its claims by presenting the approved plans and building permits for the construction of the 8-storey building it had committed to build. Accusing YBC of legal default, [BII] claim[ed] that YBC miserably failed to complete the construction of the 8-storey building within the 360-day timeframe agreed upon by the parties. Since the original agreement cited the amount of Php36,900,000 as the total contract price, [BII] maintain[ed] that the same amount [should] stand in the absence of any written contract saying otherwise. Considering that no written authority was given by [BII] regarding the changes in the construction contract, [BII] argue[d] that YBC [was] precluded from claiming additional costs pursuant to Article 1724 of the Civil Code and the ruling in *Powton Conglomerate vs. Agcolicol* (400 SCRA 523). Moreover, [BII] insist[ed] that full payment, if not overpayment, was already complied with since YBC was able to collect over Php40 million which [was] much more than the original contract price. Finally, [BII] question[ed] the admissibility and probative value of the private documents submitted by YBC in support of its monetary claim specifically Exhibits “B” to “F.”⁷

The CA ruled that BII’s appeal was impressed with merit, finding that YBC failed to prove that it was entitled to collect any balance from BII.⁸

The CA noted that the only evidence showing YBC’s alleged monetary claims against BII was its Accomplishment Billing (Exhibit “B”) which showed BII’s purported balance of ₱13,344,121.39 on the main contract and ₱11,488,230.89 on the extra works.⁹ The CA ruled that apart from the Accomplishment Billing, which was self-serving, YBC failed to submit other credible evidence to prove the actual expenses and amount of work it claimed to have accomplished such as receipts, payrolls or other similar documents.¹⁰ The CA further ruled that the Accomplishment Billing, which was a private document, could not be given probative weight

⁶ Id. at 102.

⁷ Id. at 28-31.

⁸ Id. at 31.

⁹ Id. at 31-32.

¹⁰ Id. at 32.

considering that its due execution and authenticity was not duly proven in accordance with procedural rules.¹¹ The CA excluded Exhibit “B” as evidence because of YBC’s failure to authenticate it.¹² With the exclusion of the Accomplishment Billing, the CA concluded that YBC’s cause of action for collection no longer had any leg to stand on.¹³

The dispositive portion of the CA Decision states:

WHEREFORE, in view of the foregoing premises, the present petition is GRANTED. The assailed Decision dated 21 November 2008 rendered by the Regional Trial Court, Branch 21 in Cebu City in Civil Case No. CEB-22526 is REVERSED and SET ASIDE. Consequently, the x x x complaint of plaintiff-appellee is dismissed.

SO ORDERED.¹⁴

YBC filed a Motion for Reconsideration,¹⁵ which was denied by the CA in its Resolution¹⁶ dated September 14, 2011.

Hence, the present Petition. BII filed a Comment¹⁷ dated April 20, 2012. YBC filed a Reply¹⁸ dated October 17, 2012.

The Issues

YBC raises the following issues in its Petition:

1. Whether the CA erred in setting aside the formal requirements of law on specific denial by not giving probative value to YBC’s Accomplishment Billing (Exhibit “B”) even though it was offered by BII as its own evidence (Exhibit “2”);
2. Whether the CA erred when it held that the letter of BII’s Ernesto Dacay, Sr. (Exhibit “F”) was not duly authenticated; and
3. Whether the CA erred when it reversed the judgment of the RTC on the basis of its ruling that:
 - a. YBC’s Accomplishment Billing has no probative value;

¹¹ Id.

¹² Id. at 34.

¹³ Id.

¹⁴ Id. at 37.

¹⁵ Id. at 38-59.

¹⁶ Id. at 61-64.

¹⁷ Id. at 116-146.

¹⁸ Id. at 149-158.



- b. The letter of BII's Ernesto Dacay, Sr. (Exhibit "F") was not duly authenticated.
- c. The Certification of BII (Exhibit "E") that the subject building was completed was contradicted by YBC's own evidence.¹⁹

The Court's Ruling

The Petition is without merit.

The Rules require that only questions of law should be raised in a *certiorari* petition filed under Rule 45.²⁰ The Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding or conclusive on the parties and upon this Court."²¹ Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to the Court.²²

The Rules however do admit exceptions.²³ A close reading of the present Petition shows that what the Court is being asked to resolve is, what should prevail — the findings of fact of the RTC or the findings of fact of the CA. Considering that the findings of fact of both courts are obviously conflicting, the review of which is an admitted exception, the Court will proceed to rule on the present Petition.²⁴

To prove its monetary claims, YBC presented the following documents: (1) the revised cost proposal dated October 17, 1995 wherein the parties agreed on the construction of the initial five-story building at a cost of ₱36,900,000.00 (Exhibit "A"); (2) the cost breakdown for the additional works in the building bearing the conformity of BII's representatives (Exhibit "C"); and (3) the Accomplishment Billing dated May 18, 1998 showing ₱24,832,352.38 as YBC's total collectible both on the main contract and the extra works (Exhibit "B").²⁵

The CA correctly pointed out that while Exhibits "A" and "C" provide bases for the agreed cost in the construction of the building, it cannot be determined from those documents alone the amount or extent of work actually accomplished by YBC (and accepted by BII or if unaccepted by BII,

¹⁹ Id. at 8-9.

²⁰ RULES OF COURT, Rule 45, Sec. 1.

²¹ *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999).

²² *Pascual v. Burgos*, 776 Phil. 167, 182 (2016), citing *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002); *Tabaco v. Court of Appeals*, 309 Phil. 442 (1994); and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988).

²³ *Pascual v. Burgos*, id. at 182.

²⁴ *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, 805 Phil. 244, 255 (2017).

²⁵ *Rollo*, p. 31.



conformed with agreed specifications) which would entitle it to collect from BII.²⁶

The Accomplishment Billing is thus crucial to YBC's cause of action. Its purpose, as duly acknowledged by the CA, was precisely to show the progress of the work done and the expenses incurred as a result thereof.²⁷

*YBC's Accomplishment Billing dated
May 18, 1998 (Exhibit "B"/Exhibit "2")*

YBC is of the position that there is no longer the need to prove the genuineness and due execution of the Accomplishment Billing because it is an actionable document that was attached to the complaint and not specifically denied under oath by BII.²⁸ YBC argues that BII's denial in its Answer was insufficient because it did not specifically deny the genuineness and due execution of the Accomplishment Billing.²⁹

To recall, YBC's complaint alleged, among others, that:

3. That sometime in 1994, the defendant contracted the services of plaintiff for the purpose of constructing its commercial building located at Escario St. corner F. Ramos Extension, Cebu City on an accomplishment billing basis;

4. As of May 18, 1998, on the main contract, the plaintiff has accomplished works in the total amount of P54,022,551.39;

5. Of said accomplished work in the main contract, the defendant has paid the total amount of P40,678,430.00, leaving a balance of P13,344,121.39;

6. The defendant also required the plaintiff to do extra works on said building in the amount of P11,839,110.99;

7. That of said amount, the amount of P350,880.00 for the water cistern has been deducted, leaving a balance of P11,488,230.89;

8. Thus the plaintiff has a collectible amount of P24,832,352.38 from the defendant on both the main contract and extra works per accomplishment billing hereto attached as Annex "A";

9. That the plaintiff demanded payment of said amount from the defendant, but despite demand, the defendant has failed to pay its account with the plaintiff, prompting the filing of the present action[.]³⁰

On the other hand, BII responded in its Answer, under oath, that:

²⁶ Id. at 34.

²⁷ Id.

²⁸ Id. at 9.

²⁹ Id. at 10.

³⁰ Id. at 65-66.



4. It specifically denies paragraph 4 of the complaint as to the value of plaintiff's alleged accomplishment as the same appears to be bloated and exaggerated.

5. It admits the allegation in paragraph 5 of the complaint that defendant has paid at least P40,768,430.00 but denies the allegation therein that there is an unpaid balance. Considering plaintiff's actual accomplishments, the quality (or lack thereof) of its workmanship, and its delay in the completion of the construction, the amount already paid to plaintiff is more than enough.

6. It specifically denies paragraph 6 of the complaint. Plaintiff has not done extra works. The supposed extra works were actually remedial works, which were necessitated by plaintiff's defective workmanship and construction inadequacies.

7. It specifically denies paragraph 7 of the complaint. Defendant maintains that it is not liable to pay alleged extra works, as there were none.

8. It specifically denies paragraph 8 of the complaint. Plaintiff does not anymore have any collectible amount from defendant.

9. It specifically denies paragraph 9 of the complaint. Plaintiff has not actually made demands to pay. What plaintiff submitted to defendant were "requests for evaluation of accomplishments".³¹

BII claims that even the Petition admits that the Answer was verified and there was a specific denial of the Accomplishment Billing in paragraphs 8 and 9 of the Answer.³²

BII takes the position that the Accomplishment Billing is not an actionable document because it is not in the nature of a contract which could be the source of rights and obligations and, pursuant to Section 8, Rule 8 of the Rules, the requirement of a denial under oath does not apply when the adverse party does not appear to be a party to the instrument.³³ BII considers it self-serving.³⁴ Furthermore, BII used the said exhibit as an admission against interest of YBC that the building was not yet 100% completed as of May 18, 1998 despite the supposed agreement to complete it within 360 days from its commencement in 1994.³⁵

The Court finds that the subject Accomplishment Billing is NOT an actionable document.

Sections 7 and 8, Rule 8 of the Rules 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

³¹ Id. at 73-74.

³² Id. at 140-141.

³³ Id. at 140.

³⁴ Id.

³⁵ Id. at 141.

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. (Emphasis and underscoring supplied)

As provided in the Rules, a written instrument or document is “actionable” when an action or defense is based upon such instrument or document. While no contract or other instrument need not and cannot be set up as exhibit which is not the foundation of the cause of action or defense, those instruments which are merely to be used as evidence do not fall within the rule on actionable document.³⁶

To illustrate, in an action to enforce a written contract of lease, the lease contract is the basis of the action and therefore a copy thereof must either be set forth in the complaint or its substance must be recited therein, attaching either the original or a copy to the complaint.³⁷ The lease contract is an actionable document. Any letter or letters written by the lessee to the lessor or *vice versa* concerning the contract should not be set forth in the complaint.³⁸ While such letters might have some evidential value, evidence, even in writing, does not necessarily have a proper place in the pleadings.³⁹

To clarify, not all documents or instruments attached or annexed to the complaint or the answer are actionable documents. To qualify as an actionable document pursuant to Section 7, Rule 8 of the Rules, the specific right or obligation which is the basis of the action or defense must emanate therefrom or be evident therein. If the document or instrument so qualifies and is pleaded in accordance with Section 7 — the substance thereof being set forth in the pleading, and the original or a copy thereof attached to the pleading as an exhibit — then the genuineness and due execution thereof are deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts pursuant to Section 8 of Rule 8. Thus, a simple specific denial without oath is sufficient: (1) where the instrument or document is not the basis but a mere evidence of the claim or defense;⁴⁰ (2) when the adverse party does not appear as a party to the

³⁶ Vicente J. Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Vol. I, 1973 ed., pp. 586-587, citing 71 C.J.S. 780-783.

³⁷ *Id.* at 587.

³⁸ *Id.*

³⁹ *Id.*, citing *Gregorio Araneta, Inc. v. Lyric Film Exchange, Inc.*, 58 Phil. 736, 741 (1933).

⁴⁰ Manuel V. Moran, *COMMENTS ON THE RULES OF COURT*, Vol. I (1979 ed.), p. 326, citing *Gregorio Araneta, Inc. v. Lyric Film Exchange Inc.*, *id.*



document or instrument;⁴¹ and (3) when compliance with an order for an inspection of the original instrument is refused.⁴²

The complaint filed by YBC is an action for a sum of money arising from its main contract with BII for the construction of a building. YBC's cause of action is primarily based on BII's alleged non-payment of its outstanding debts to YBC arising from their main contract, despite demand. If there was a written building or construction contract that was executed between BII and YBC, then that would be the actionable document because its terms and stipulations would spell out the rights and obligations of the parties. However, no such contract or agreement was attached to YBC's Complaint.

Clearly, the subject Accomplishment Billing is not an actionable document contemplated by the Rules, but is merely evidentiary in nature. As such, there was no need for BII to specifically deny its genuineness and due execution under oath.

Besides, even where the written instrument or document copied in or attached to the pleading is the basis of the claim or defense alleged therein, if the party against whom the written instrument or document is sought to be enforced does not appear therein to have taken part in its execution, such party is not bound to make a verified specific denial.⁴³ For example, heirs who are sued upon a written contract executed by their father, are not bound to make a verified specific denial;⁴⁴ and the defendant, in an action upon a note executed by him and endorsed by the payee to the plaintiff, is not bound to make a verified specific denial of the genuineness and due execution of the indorsement.⁴⁵

Since BII does not appear to have taken part in the execution of the Accomplishment Billing, a verified specific denial of its genuineness and due execution is therefore unnecessary.

The Court cannot, thus, sustain YBC's contention that the subject Accomplishment Billing should be admitted in evidence due to BII's failure to specifically deny under oath its genuineness and due execution.

Proceeding now to the probative value of the Accomplishment Billing, the Court agrees with the CA's ruling that it should be excluded as evidence on the ground of YBC's failure to authenticate the same.

The annexation of an exhibit to a pleading, such as the Accomplishment Billing in this case, does not amount to an allegation or averment that the statements and recitals contained therein are true and correct or that the truth of the recitals therein is tendered as an issue in the

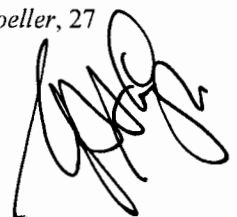
⁴¹ RULES OF COURT, Rule 8, Sec. 8.

⁴² Id.

⁴³ Moran, *supra* note 40, at 326.

⁴⁴ Id., citing *Lim-Chingco v. Terariray*, 5 Phil. 120 (1905).

⁴⁵ Id., citing *Heinszen & Co. v. Jones*, 5 Phil. 27 (1905); *Banco Español-Filipino v. McKay & Zoeller*, 27 Phil. 183 (1914).



case; rather, the truth of such recitals must be expressly alleged in the pleading in order to raise the issue.⁴⁶

The CA correctly ruled that the Accomplishment Billing, being a private document, was not admissible considering that its due execution and authenticity were not duly proven in accordance with Section 20, Rule 132 of the Rules, to wit:

SEC. 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

Under Section 20 of Rule 132, before a private document is admitted in evidence, it must be authenticated by any of the following: the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, the person who after its execution, saw it and recognized the signature, being familiar thereto or an expert, or the person to whom the parties to the instrument had previously confessed execution thereof.

In this case, Alfredo Young (Young), the Chairman of the Board of YBC, who signed the Accomplishment Billing, never testified in court. In his stead, Nelson Go Yu (Yu) merely identified Exhibit “B” as the Accomplishment Billing which YBC submitted to BII. Yu did not testify that he saw the execution of the Accomplishment Billing. Neither did Yu affirm the genuineness of the signature of Young nor did he testify that Young previously confessed execution of the same to him.⁴⁷

In the case of *Chua v. Court of Appeals*,⁴⁸ it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents.⁴⁹ When there is no proof as to the authenticity of the writer’s signature appearing in a private document, such private document may be excluded.⁵⁰

Thus, in line with prevailing jurisprudence, the subject Accomplishment Billing should be excluded in evidence due to YBC’s

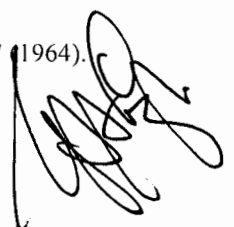
⁴⁶ 71 C.J.S. 790.

⁴⁷ See *rollo*, p. 32.

⁴⁸ 283 Phil. 253 (1992).

⁴⁹ *Id.* at 260, citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*, 120 Phil. 702, 717 (1964).

⁵⁰ *Id.*, citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*, *id.* at 717.



failure to comply with this rule on authentication of private documents.⁵¹ Thus, it cannot be accorded any probative value.

With the exclusion of Exhibit "B" (Accomplishment Billing), the Court agrees with the CA that YBC's cause of action for collection no longer has any veritable leg to stand on.⁵²

Even if its genuineness and due execution are conceded, the Accomplishment Billing is, by itself, not worthy of full faith because it is self-serving. As observed by the CA, with which the Court is in total agreement, YBC failed to submit credible evidence to prove the actual expenses and amount of work it claimed to have accomplished such as receipts, payrolls or other similar documents.⁵³

Notably, YBC was pursuing a collection suit worth several millions; it was thus incumbent upon it to present preponderant evidence to substantiate its claims. Unfortunately, it failed to comply with this duty to the detriment of its own cause.

As to YBC's argument that BII adopted the Accomplishment Billing as its own Exhibit 2 and offered the same as BII's evidence and as such, it should be accorded probative value, the exclusion of the Accomplishment Billing as evidence for YBC due to the failure to prove its due execution and authenticity should likewise apply when the Accomplishment Billing is considered as evidence for BII. It will indeed be an absurd situation if a private writing is excluded as evidence for one party on the ground that its due execution and authenticity have not been established and at the same time, it is accorded with some probative value in favor of the opposing party which presupposes that it is admitted as the latter's evidence.

*BII's Letter dated May 7, 1998
(Exhibit "F")*

YBC claims that the CA erred in holding inadmissible the letter dated May 7, 1998 (Ernesto Letter), allegedly written by Ernesto Dacay, Sr. (Ernesto), who apologized to YBC for BII's inability to fulfill its payment due to financial constraints. YBC reasoned that the CA should have given credence to the Ernesto Letter because it is an admission against BII's interest, admissible under the Rules.

For the Ernesto Letter to be given credence as an admission against BII's interest, it should first be admissible as a documentary evidence. Like the Accomplishment Billing, which is also a private document, the due execution and authenticity of the Ernesto Letter must be proved by YBC.

⁵¹ See *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*, 430 Phil. 162, 168-169 (2002); *Tigno v. Spouses Aquino*, 486 Phil. 254, 274-275 (2004).

⁵² *Rollo*, p. 34.

⁵³ *Id.* at 32.

As a prerequisite to the admission in evidence of the Ernesto Letter, which is private document, its identity and authenticity must be properly laid and reasonably established.⁵⁴ This is mandated by the afore-quoted Section 20, Rule 132 of the Rules.

Here, the records of the case show that the Ernesto Letter was only entered into evidence but was never actually identified in open court by YBC's witness, Yu. The CA thus correctly ruled that the Ernesto Letter is inadmissible in evidence in view of YBC's failure to authenticate the same.⁵⁵ No probative value can be accorded to it.

*The Certification dated November 15, 1997
(Exhibit "E")*

YBC argues that the CA should not have disregarded the Certification dated November 15, 1997 (Mary Certification), allegedly issued by BII's President, Mary Dacay, affirming YBC's successful completion of the subject building even if YBC's witness, Yu, allegedly admitted in his testimony that the subject building was not completed.⁵⁶

The Court notes that Exhibit "E" is a mere photocopy.⁵⁷ Pursuant to Section 3, Rule 130 of the Rules or the Best Evidence Rule:

SEC. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The records show that YBC did not invoke any of the foregoing exceptions to the Best Evidence Rule to justify the admission of a secondary evidence in lieu of the original Mary Certification. Having been admitted in

⁵⁴ See Vicente J. Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Vol. VII, Part II, 1997 ed., p. 335, citing 2 Jones on Evidence, 4th ed., p. 964 and 32 C.J.S. 476.

⁵⁵ *Rollo*, p. 36.

⁵⁶ *Id.* at 16.

⁵⁷ *Records*, p. 97.

violation of the Best Evidence Rule, Exhibit “E” should have been excluded and not accorded any probative value.

Nonetheless, the Court agrees with the CA’s findings that the veracity of the Mary Certification no longer holds much significance since YBC’s Yu openly admitted that YBC failed to complete the building, to wit:

“Q: Now, you said that the project was started in 1994, can you tell us the month in 1994 that the project was started?

A: I forgot.

Q: Could you tell us that the project was completed in 1995?

A: No.

Q: How about in 1996, the project was completed?

A: No.

Q: *And until now it was not yet completed?*

A: *It was not completed, because they could not pay.*

Q: *You are telling us that even as of this time November 27, 2000, the project is not yet completed?*

A: Not yet completed.”⁵⁸

Given the foregoing, YBC being the claimant or plaintiff in this case, has not discharged its burden of proof — the duty to present evidence on the facts in issue necessary to establish its claim by the amount of evidence required by law,⁵⁹ which is preponderance of evidence.⁶⁰

Preponderance of evidence is defined as —

... x x x 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 the evidence” or “greater weight of the credible evidence.” [It] is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto.⁶¹

In addition, according to *United Airlines, Inc. v. Court of Appeals*,⁶² the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant’s.

In view of the insufficiency of the evidence adduced by YBC to prove that it is entitled to collect from BII, the Court finds no cogent or compelling reason to deviate from the findings and conclusions reached by the CA.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit.

⁵⁸ CA Decision dated June 28, 2011, *rollo*, pp. 35-36.

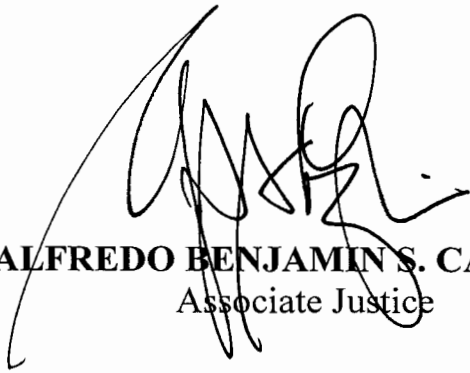
⁵⁹ RULES OF COURT, Rule 131, Sec. 1.

⁶⁰ *Id.*, Rule 133, Sec. 1.

⁶¹ *Tan, Jr. v. Hosana*, 780 Phil. 258, 266 (2016), citing *Sps. Ramos v. Obispo*, 705 Phil. 221, 230 (2013).


⁶² 409 Phil. 88, 100 (2001).

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

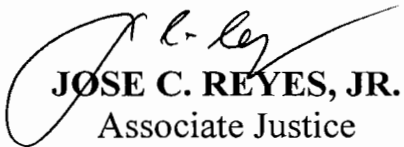
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice




JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

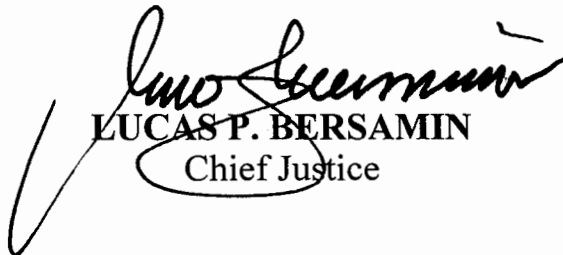
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

