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FIRST DIVISION

[G.R. No. 136804. February 19, 2003]

MANUFACTURERS HANOVER TRUST CO. and/or CHEMICAL BANK, *petitioners, vs.* **RAFAEL MA. GUERRERO,** *respondent.*

SYNOPSIS

Respondent filed a complaint for damages against petitioner bank for illegally withholding taxes charged against interest on his checking account, returning a check due to signature verification problems, and unauthorized conversion of his account. In answer thereto, petitioner alleged that the issue should be limited to actual damages as respondent's account is governed by the New York law. In support thereof, petitioner presented the authenticated affidavit of New York Attorney Alyssa Walden. Thus, petitioner filed a motion for partial summary judgment.

Petitioner's motion for summary judgment is not proper as it does not demonstrate that respondent's claims are sham, fictitious, or contrived. There can be no summary judgment where material allegations of the pleadings are in dispute and can be resolved only by trial on the merits. On the alleged foreign law applicable, the Walden affidavit and attached US court decisions therein are not proper substantiation thereof for failure to comply with Sec. 24, Rule 132 on proof of foreign laws, records, and decisions.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; WHEN PROPER.** — A court may grant a summary judgment to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages. In such event, the moving party is entitled to a judgment as a matter of law. In a motion for summary judgment, the crucial question is: are the issues raised in the pleadings *genuine*, *sham* or *fictitious*, as shown by

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affidavits, depositions or admissions accompanying the motion? A genuine issue means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is *fictitious* or *contrived* so as not to constitute a genuine issue for trial. There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.

2. ID.; EVIDENCE; PROOF OF OFFICIAL RECORDS; ON FOREIGN LAWS. – The resolution of whether a foreign law allows only the recovery of actual damages is a question of fact as far as the trial court is concerned since foreign laws do not prove themselves in our courts. Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven. Certainly, the conflicting allegations as to whether New York law or Philippine law applies to Guerrero's claims present a clear dispute on material allegations which can be resolved only by a trial on the merits. Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by (1) an *official publication* thereof or (2) a *copy attested by the officer having the legal custody thereof.* Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

3. ID.; ID.; ID.; ID.; EXCEPTIONS; NOT APPLICABLE IN CASE AT BAR. — Certain exceptions to Rule 24 of Rule 132 were recognized in *Asiavest Limited v. Court of Appeals.* The Bank, however, cannot rely thereon to support its cause. These cases involved attorneys testifying in open court during the trial in the Philippines and quoting the particular foreign laws sought to be established. On the other hand, the Walden affidavit was taken abroad *ex parte* and the affiant never testified in open court. The Walden affidavit cannot be considered as proof of New York law on damages not only because it is self-serving but also because it does not state the specific New York law on damages.

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4. ID.; CIVIL PROCEDURE; PLEADINGS; OPPOSING AFFIDAVIT; NOT MANDATORY. – The Bank makes much of Guerrero's failure to submit an opposing affidavit to the Walden affidavit. However, the pertinent provision of Section 3, Rule 35 of the old Rules of Court did not make the submission of an opposing affidavit mandatory. Thus: the adverse party prior to the day of hearing *may serve opposing affidavits.* It is axiomatic that the term "may" as used in remedial law, is only permissive and not mandatory. Guerrero cannot be said to have admitted the averments in the Bank's motion for partial summary judgment and the Walden affidavit just because he failed to file an opposing affidavit. Guerrero opposed the motion for partial summary judgment, although he did not present an opposing affidavit. Guerrero may not have presented an opposing affidavit, as there was no need for one, because the Walden affidavit did not establish what the Bank intended to prove. Certainly, Guerrero did not admit, expressly or impliedly, the veracity of the statements in the Walden affidavit. The Bank still had the burden of proving New York law and jurisprudence even if Guerrero did not present an opposing affidavit. As the party moving for summary judgment, the Bank has the burden of clearly demonstrating the absence of any genuine issue of fact and that any doubt as to the existence of such issue is resolved against the movant.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioners.
P.C. Nolasco & Associates for respondent.

D E C I S I O N

CARPIO, *J*:

The Case

This is a petition for review under Rule 45 of the Rules of Court to set aside the Court of Appeals[1] Decision of August 24, 1998 and Resolution of December 14, 1998 in CA-G.R. SP

[1] Twelfth Division composed of Justices Consuelo Ynares-Santiago *(ponente)*, Romeo J. Callejo, Sr. and Mariano M. Umali.

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No. 42310[2] affirming the trial court's denial of petitioners' motion for partial summary judgment.

The Antecedents

On May 17, 1994, respondent Rafael Ma. Guerrero ("Guerrero" for brevity) filed a complaint for damages against petitioner Manufacturers Hanover Trust Co. and/or Chemical Bank ("the Bank" for brevity) with the Regional Trial Court of Manila ("RTC" for brevity). Guerrero sought payment of damages allegedly for (1) illegally withheld taxes charged against interests on his checking account with the Bank; (2) a returned check worth US$18,000.00 due to signature verification problems; and (3) unauthorized conversion of his account. Guerrero amended his complaint on April 18, 1995.

On September 1, 1995, the Bank filed its Answer alleging, *inter alia*, that by stipulation Guerrero's account is governed by New York law and this law does not permit any of Guerrero's claims except actual damages. Subsequently, the Bank filed a Motion for Partial Summary Judgment seeking the dismissal of Guerrero's claims for consequential, nominal, temperate, moral and exemplary damages as well as attorney's fees on the same ground alleged in its Answer. The Bank contended that the trial should be limited to the issue of actual damages. Guerrero opposed the motion.

The affidavit of Alyssa Walden, a New York attorney, supported the Bank's Motion for Partial Summary Judgment. Alyssa Walden's affidavit ("Walden affidavit" for brevity) stated that Guerrero's New York bank account stipulated that the governing law is New York law and that this law bars all of Guerrero's claims except actual damages. The Philippine Consular Office in New York authenticated the Walden affidavit.

The RTC denied the Bank's Motion for Partial Summary Judgment and its motion for reconsideration on March 6, 1996

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[2] Entitled "*Manufacturers Hanover Trust Co. and/or Chemical Bank, Petitioners, versus Hon. Hermogenes R. Liwag, Presiding Judge, Regional Trial Court of Manila, Branch 55, and Rafael Ma. Guerrero, Respondents.*"

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and July 17, 1996, respectively. The Bank filed a petition for certiorari and prohibition with the Court of Appeals assailing the RTC Orders. In its Decision dated August 24, 1998, the Court of Appeals dismissed the petition. On December 14, 1998, the Court of Appeals denied the Bank's motion for reconsideration.

Hence, the instant petition.

The Ruling of the Court of Appeals

The Court of Appeals sustained the RTC orders denying the motion for partial summary judgment. The Court of Appeals ruled that the Walden affidavit does not serve as proof of the New York law and jurisprudence relied on by the Bank to support its motion. The Court of Appeals considered the New York law and jurisprudence as public documents defined in Section 19, Rule 132 of the Rules on Evidence, as follows:

"*SEC. 19. Classes of Documents.* — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

x x x x x x x x x."

The Court of Appeals opined that the following procedure outlined in Section 24, Rule 132 should be followed in proving foreign law:

"*SEC. 24. Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer

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in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office."

The Court of Appeals likewise rejected the Bank's argument that Section 2, Rule 34 of the old Rules of Court allows the Bank to move with the supporting Walden affidavit for partial summary judgment in its favor. The Court of Appeals clarified that the Walden affidavit is not the supporting affidavit referred to in Section 2, Rule 34 that would prove the lack of genuine issue between the parties. The Court of Appeals concluded that even if the Walden affidavit is used for purposes of summary judgment, the Bank must still comply with the procedure prescribed by the Rules to prove the foreign law.

The Issues

The Bank contends that the Court of Appeals committed reversible error in —

"x x x HOLDING THAT [THE BANK'S] PROOF OF FACTS TO SUPPORT ITS MOTION FOR SUMMARY JUDGMENT MAY NOT BE GIVEN BY AFFIDAVIT;

x x x HOLDING THAT [THE BANK'S] AFFIDAVIT, WHICH PROVES FOREIGN LAW AS A FACT, IS "HEARSAY" AND THEREBY 'CANNOT SERVE AS PROOF OF THE NEW YORK LAW RELIED UPON BY PETITIONERS IN THEIR MOTION FOR SUMMARY JUDGMENT x x x.'"[3]

First, the Bank argues that in moving for partial summary judgment, it was entitled to use the Walden affidavit to prove that the stipulated foreign law bars the claims for consequential, moral, temperate, nominal and exemplary damages and attorney's fees. Consequently, outright dismissal by summary judgment of these claims is warranted.

Second, the Bank claims that the Court of Appeals mixed up the requirements of Rule 35 on summary judgments and those of a trial on the merits in considering the Walden affidavit

[3] *Rollo*, pp. 8-9.

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as "hearsay." The Bank points out that the Walden affidavit is not hearsay since Rule 35 expressly permits the use of affidavits.

Lastly, the Bank argues that since Guerrero did not submit any opposing affidavit to refute the facts contained in the Walden affidavit, he failed to show the need for a trial on his claims for damages other than actual.

The Court's Ruling

The petition is devoid of merit.

The Bank filed its motion for partial summary judgment pursuant to Section 2, Rule 34 of the old Rules of Court which reads:

"Section 2. *Summary judgment for defending party.* — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof."

A court may grant a summary judgment to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages. In such event, the moving party is entitled to a judgment as a matter of law.[4]

In a motion for summary judgment, the crucial question is: are the issues raised in the pleadings ***genuine, sham*** or ***fictitious,*** as shown by affidavits, depositions or admissions accompanying the motion?[5]

A genuine issue means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is *fictitious* or *contrived* so as not to constitute a genuine issue for trial.[6]

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[4] *Garcia v. Court of Appeals*, 312 SCRA 180 (1999).

[5] *Diman v. Alumbres*, 299 SCRA 459 (1998).

[6] *Paz v. Court of Appeals*, 181 SCRA 26 (1990).

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A perusal of the parties' respective pleadings would show that there are genuine issues of fact that necessitate formal trial. Guerrero's complaint before the RTC contains a statement of the ultimate facts on which he relies for his claim for damages. He is seeking damages for what he asserts as "illegally withheld taxes charged against interests on his checking account with the Bank, a returned check worth US$18,000.00 due to signature verification problems, and unauthorized conversion of his account." In its Answer, the Bank set up its defense that the agreed foreign law to govern their contractual relation bars the recovery of damages other than actual. Apparently, facts are asserted in Guerrero's complaint while specific denials and affirmative defenses are set out in the Bank's answer.

True, the court can determine whether there are genuine issues in a case based merely on the affidavits or counter-affidavits submitted by the parties to the court. However, as correctly ruled by the Court of Appeals, the Bank's motion for partial summary judgment as supported by the Walden affidavit does not demonstrate that Guerrero's claims are sham, fictitious or contrived. On the contrary, the Walden affidavit shows that the facts and material allegations as pleaded by the parties are disputed and there are substantial triable issues necessitating a formal trial.

There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.[7] The resolution of whether a foreign law allows only the recovery of actual damages is a question of fact as far as the trial court is concerned since foreign laws do not prove themselves in our courts.[8] Foreign laws are not a matter of judicial notice.[9] Like any other fact, they must be alleged and proven. Certainly, the conflicting allegations as to whether New York law or Philippine law applies to Guerrero's claims present a clear dispute on material allegations which can be resolved only by a trial on the merits.

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[7] *National Irrigation Administration v. Gamit*, 215 SCRA 436 (1992).

[8] *Llorente v. Court of Appeals*, 345 SCRA 592 (2000).

[9] *Ibid.*

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Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by (1) an ***official publication*** thereof or (2) a ***copy attested by the officer having the legal custody thereof.*** Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

Certain exceptions to this rule were recognized in ***Asiavest Limited v. Court of Appeals***[10] which held that:

"x x x x x x x x x:

Although it is desirable that foreign law be proved in accordance with the above rule, however, the Supreme Court held in the case of *Willamette Iron and Steel Works v. Muzzal*, that Section 41, Rule 123 (Section 25, Rule 132 of the Revised Rules of Court) does not exclude the presentation of other competent evidence to prove the existence of a foreign law. *In that case, the Supreme Court considered the testimony under oath of an attorney-at-law of San Francisco, California, who quoted verbatim a section of California Civil Code and who stated that the same was in force at the time the obligations were contracted, as sufficient evidence to establish the existence of said law.* Accordingly, in line with this view, the Supreme Court in the *Collector of Internal Revenue v. Fisher, et al.*, upheld the Tax Court in considering the pertinent law of California as proved by the respondents' witness. In that case, *the counsel for respondent "testified that as an active member of the California Bar since 1951, he is familiar with the revenue and taxation laws of the State of California. When asked by the lower court to state the pertinent California law as regards exemption of intangible personal properties, the witness cited Article 4, Sec. 13851 (a) & (b) of the California Internal and Revenue Code as published in Derring's California Code, a publication of Bancroft-Whitney Co., Inc. And*

[10] 296 SCRA 539 (1998).

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as part of his testimony, a full quotation of the cited section was offered in evidence by respondents." Likewise, in several naturalization cases, it was held by the Court that evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice, may be allowed and used as basis for favorable action, if, in the light of all the circumstances, the Court is "satisfied of the authenticity of the written proof offered." Thus, in a number of decisions, mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila was held to be competent proof of that law." (Italics supplied)

The Bank, however, cannot rely on ***Willamete Iron and Steel Works v. Muzzal*** or ***Collector of Internal Revenue v. Fisher*** to support its cause. These cases involved attorneys testifying in open court during the trial in the Philippines and quoting the particular foreign laws sought to be established. On the other hand, the Walden affidavit was taken abroad *ex parte* and the affiant never testified in open court. The Walden affidavit cannot be considered as proof of New York law on damages not only because it is self-serving but also because it does not state the specific New York law on damages. We reproduce portions of the Walden affidavit as follows:

"3. In New York, "[n]ominal damages are damages in name only, trivial sums such as six cents or $1. Such damages are awarded both in tort and contract cases when the plaintiff establishes a cause of action against the defendant, but is unable to prove" actual damages. Dobbs, Law of Remedies, § 3.32 at 294 (1993). Since Guerrero is claiming for actual damages, he cannot ask for nominal damages.

4. There is no concept of temperate damages in New York law. I have reviewed Dobbs, a well-respected treatise, which does not use the phrase "temperate damages" in its index. I have also done a computerized search for the phrase in all published New York cases, and have found no cases that use it. I have never heard the phrase used in American law.

5. The Uniform Commercial Code ("UCC") governs many aspects of a Bank's relationship with its depositors. In this case, it governs Guerrero's claim arising out of the non-payment of the $18,000 check. Guerrero claims that this was a wrongful dishonor. However, the UCC

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states that "justifiable refusal to pay or accept" as opposed to dishonor, occurs when a bank refuses to pay a check for reasons such as a missing indorsement, a missing or illegible signature or a forgery, § 3-510, Official Comment 2. . . . to the Complaint, MHT returned the check because it had no signature card on . . . and could not verify Guerrero's signature. In my opinion, consistent with the UCC, that is a legitimate and justifiable reason not to pay.

6. Consequential damages are not available in the ordinary case of a justifiable refusal to pay. UCC 1-106 provides that "neither consequential or special or punitive damages may be had except as specifically provided in the Act or by other rule of law." UCC 4-103 further provides that consequential damages can be recovered only where there is bad faith. This is more restrictive than the New York common law, which may allow consequential damages in a breach of contract case (as does the UCC where there is a wrongful dishonor).

7. Under New York law, requests for lost profits, damage to reputation and mental distress are considered consequential damages. *Kenford Co., Inc. v. Country of Erie*, 73 N.Y.2d 312, 319, 540 N.Y.S.2d 1, 4-5 (1989) (lost profits); *Motif Construction Corp. v. Buffalo Savings Bank*, 50 A.D.2d 718, 374 N.Y.S..2d 868, 869-70 (4th Dep't 1975) damage to reputation); Dobbs, Law of Remedies §12.4(1) at 63 (emotional distress).

8. As a matter of New York law, a claim for emotional distress cannot be recovered for a breach of contract. *Geler v. National Westminster Bank U.S.A.*, 770 F. Supp. 210, 215 (S.D.N.Y. 1991); *Pitcherello v. Moray Homes, Ltd.*, 150 A.D.2d 860, 540 N.Y.S.2d 387, 390 (3d Dep't 1989) *Martin v. Donald Park Acres*, 54 A.D.2d 975, 389 N.Y.S..2d 31, 32 (2nd Dep't 1976). Damage to reputation is also not recoverable for a contract. *Motif Construction Corp. v. Buffalo Savings Bank*, 374 N.Y.S.2d at 869-70.

9. In cases where the issue is the breach of a contract to purchase stock, New York courts will not take into consideration the performance of the stock after the breach. Rather, damages will be based on the value of the stock at the time of the breach, *Aroneck v. Atkin*, 90 A.D.2d 966, 456 N.Y.S.2d 558, 559 (4th Dep't 1982), app. den. 59 N.Y.2d 601, 449 N.E.2d 1276, 463 N.Y.S.2d 1023 (1983).

10. Under New York law, a party can only get consequential damages if they were the type that would naturally arise from the breach and if they were "brought within the contemplation of parties as the probable result of the breach at the time of or prior to

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contracting." *Kenford Co., Inc. v. Country of Erie*, 73 N.Y.2d 312, 319, 540 N.Y.S.2d 1, 3 (1989), (quoting *Chapman v. Fargo*, 223 N.Y. 32, 36 (1918).

11. Under New York law, a plaintiff is not entitled to attorneys' fees unless they are provided by contract or statute. *E.g., Geler v. National Westminster Bank*, 770 F. Supp. 210, 213 (S.D.N.Y. 1991); *Camatron Sewing Mach, Inc. v. F.M. Ring Assocs., Inc.,* 179 A.D.2d 165, 582 N.Y.S.2d 396 (1st Dep't 1992); *Stanisic v. Soho Landmark Assocs.*, 73 A.D.2d 268, 577 N.Y.S.2d 280, 281 (1st Dep't 1991). There is no statute that permits attorney's fees in a case of this type.

12. Exemplary, or punitive damages are not allowed for a breach of contract, even where the plaintiff claims the defendant acted with malice. *Geler v. National Westminster Bank,* 770 F. Supp. 210, 215 (S.D.N.Y. 1991); *Catalogue Service of. . . chester*[11] *v. Insurance Co. of North America,* 74 A.D.2d 837, 838, 425 N.Y.S.2d 635, 637 (2d Dep't 1980); *Senior v. Manufacturers Hanover Trust Co.*, 110 A.D.2d 833, 488 N.Y.S.2d 241, 242 (2d Dep't 1985).

13. Exemplary or punitive damages may be recovered only where it is alleged and proven that the wrong supposedly committed by defendant amounts to a fraud aimed at the public generally and involves a high moral culpability. *Walker v. Sheldon*, 10 N.Y.2d 401, 179 N.E.2d 497, 223 N.Y.S.2d 488 (1961).

14. Furthermore, it has been consistently held under New York law that exemplary damages are not available for a mere breach of contract for in such a case, as a matter of law, only a private wrong and not a public right is involved. *Thaler v. The North Insurance Company,* 63 A.D.2d 921, 406 N.Y.S.2d 66 (1st Dep't 1978)."[12]

The Walden affidavit states conclusions from the affiant's personal interpretation and opinion of the facts of the case *vis a vis* the alleged laws and jurisprudence without citing any law in particular. The citations in the Walden affidavit of various U.S. court decisions do not constitute proof of the official records or decisions of the U.S. courts. While the Bank attached copies of some of the U.S. court decisions cited in the Walden affidavit, these copies do not comply with Section 24 of Rule 132 on proof of official records or decisions of foreign courts.

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[11] Illegible.

[12] *Rollo*, pp. 26-30.

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The Bank's intention in presenting the Walden affidavit is to prove New York law and jurisprudence. However, because of the failure to comply with Section 24 of Rule 132 on how to prove a foreign law and decisions of foreign courts, the Walden affidavit did not prove the current state of New York law and jurisprudence. Thus, the Bank has only alleged, but has not proved, what New York law and jurisprudence are on the matters at issue.

Next, the Bank makes much of Guerrero's failure to submit an opposing affidavit to the Walden affidavit. However, the pertinent provision of Section 3, Rule 35 of the old Rules of Court did not make the submission of an opposing affidavit mandatory, thus:

> "SEC. 3. *Motion and proceedings thereon.* — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party prior to the day of hearing *may serve opposing affidavits*. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Italics supplied)

It is axiomatic that the term "may" as used in remedial law, is only permissive and not mandatory.[13]

Guerrero cannot be said to have admitted the averments in the Bank's motion for partial summary judgment and the Walden affidavit just because he failed to file an opposing affidavit. Guerrero opposed the motion for partial summary judgment, although he did not present an opposing affidavit. Guerrero may not have presented an opposing affidavit, as there was no need for one, because the Walden affidavit did not establish what the Bank intended to prove. Certainly, Guerrero did not admit, expressly or impliedly, the veracity of the statements in the Walden affidavit. The Bank still had the burden of proving New York law and jurisprudence even if Guerrero did not present an opposing affidavit. As the party moving for summary judgment, the Bank has the burden of clearly demonstrating the absence of any genuine issue

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[13] *Shauf v. Court of Appeals*, 191 SCRA 713 (1990).

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of fact and that any doubt as to the existence of such issue is resolved against the movant.[14]

Moreover, it would have been redundant and pointless for Guerrero to submit an opposing affidavit considering that what the Bank seeks to be opposed is the very subject matter of the complaint. Guerrero need not file an opposing affidavit to the Walden affidavit because his complaint itself controverts the matters set forth in the Bank's motion and the Walden affidavit. A party should not be made to deny matters already averred in his complaint.

There being substantial triable issues between the parties, the courts *a quo* correctly denied the Bank's motion for partial summary judgment. There is a need to determine by presentation of evidence in a regular trial if the Bank is guilty of any wrongdoing and if it is liable for damages under the applicable laws.

This case has been delayed long enough by the Bank's resort to a motion for partial summary judgment. Ironically, the Bank has successfully defeated the very purpose for which summary judgments were devised in our rules, which is, to aid parties in avoiding the expense and loss of time involved in a trial.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated August 24, 1998 and the Resolution dated December 14, 1998 of the Court of Appeals in CA-G.R. SP No. 42310 is *AFFIRMED*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Vitug, and *Azcuna, JJ.*, concur.

Ynares-Santiago, J., took no part.

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[14] *Natalia Realty Corporation v. Vallez*, 173 SCRA 534 (1989).