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See Ban vs. IAC

SECOND DIVISION

[G.R. No. 66272. October 17, 1986]

SEE BAN, *petitioner, vs.* THE INTERMEDIATE APPELLATE COURT, THE REGIONAL TRIAL COURT OF MANILA, BRANCH XI, and LU IT, *respondents.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; WITNESSES; CREDIBILITY; NOT AFFECTED BY THE FACT THAT THEY ARE MAINTAINER OF A GAMBLING HOUSE OR COCKFIGHT AFICIANADOS.— Re-credibility of private respondent and his witness Judge Madamba, and the existence of a mahjong joint. The fact that private respondent Lu It is the maintainer of a gambling house who has obtained no license therefor is no argument against his credibility. And while Judge Madamba had admitted being a cockfight "aficionado", accustomed to betting thousands of pesos this circumstance cannot downgrade his categorical testimony that private petitioner had admitted before him and several others that he indeed owed Lu It the sum prayed for. Petitioner contends he could not possibly have borrowed money from Lu It from time to time since he (petitioner) was "very solvent", with money in the bank and a business of his own; while Lu It was a mere "trucking agent" with no office of his own as such agent. Be it noted however that as operator of a gambling joint, Lu It must have been in daily possession of sizeable cash which might be needed precisely to serve the cash requirements of his regular customers. We must not forget too that a gambling operator collects a heavy "tong" or fee from the winners in the games. As to the bank deposit of petitioner, suffice it to say that there are many bank depositors who find need to occasionally borrow money elsewhere due to immediate need, and this is particularly true in the case of gambling losers at a gambling joint. Petitioner's argument that if indeed it was true that he was indebted to Lu It, the latter could have just set-off part of it with the rentals he was supposed to pay petitioner for the use of petitioner's premises, is not tenable. Lu It could have had any number of reasons for not making any off-setting. For instance, he must

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have wanted to retain petitioner's goodwill both as a regular customer and as a lessor, who could continue to provide him with a convenient place for the gambling business.

DECISION

PARAS, *J.*:

This is a petition for review of the decision of the Intermediate Appellate Court (IAC), now the Court of Appeals in AC-G.R. CV No. 67797 (*Lu It vs. See Ban*) promulgated on November 29, 1983, affirming *in toto* the findings of the trial court, and of the resolution of the same Appellate Court dated January 12, 1984, denying petitioner's motion for reconsideration.

Petitioner raises the following assignments of error.

ASSIGNMENTS OF ERROR

I. THE RESPONDENT INTERMEDIATE APPELLATE COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE TESTIMONIES OF PRIVATE RESPONDENT LU IT AND WITNESS JUDGE ERNESTO A. MADAMBA OF THE METROPOLITAN TRIAL COURT OF MANILA.

II. THE RESPONDENT INTERMEDIATE APPELLATE COURT GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT PETITIONER SEE BAN BORROWED P16,750.00 FROM PRIVATE RESPONDENT LU IT TO PAY OFF THE FORMER'S GAMBLING DEBTS TO OTHERS.

III. THE RESPONDENT INTERMEDIATE APPELLATE COURT GRAVELY ERRED IN CLOSING ITS EYES TO THE FACT THAT THE RENTED PLACE OF PRIVATE RESPONDENT LU IT LOCATED AT SOLER STREET WAS CONVERTED INTO A GAMBLING DEN WHERE SAID LU IT "*ENGAGED IN THE BUSINESS OF MAINTAINING MAHJONG SESSIONS.*

IV. THE RESPONDENT INTERMEDIATE APPELLATE COURT GRAVELY ERRED IN NOT CONSIDERING THE ALLEGED INDEBTEDNESS OF PETITIONER SEE BAN TO RESPONDENT LU IT IN THE AMOUNT OF P16,750.00 AS A GAMBLING DEBT AND, THEREFORE, GOVERNED BY THE PROVISIONS OF ART. 2014 OF THE CIVIL CODE AND OTHER LAWS.

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The facts as found by the IAC and its legal conclusions thereon are stated by the Appellate Court thru then Justice Eduardo Caguioa, in the following wise —

Appeal by defendant See Ban, hereinafter called appellant, from a decision dated October 7, 1980, of the former Court of First Instance of Manila, Branch XI, the dispositive portion of which reads as follows:

> "WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the amount of P15,700.00 with legal interest from the filing of the complaint, and 10% of the amount due as attorney's fees and costs.
>
> Defendant's counterclaim is ordered dismissed for lack of merit.
>
> SO ORDERED.

because of three (3) errors allegedly committed by the Court *a quo* which appellant discusses jointly and these are:

> I
>
> THE LOWER COURT GRIEVOUSLY ERRED IN RENDERING A DECISION THAT IS NOT BORNE BY THE ACTUAL EVIDENCE ADDUCED DURING THE TRIAL.
>
> II
>
> THE LOWER COURT GRIEVOUSLY ERRED IN GIVING CREDIT AND CREDENCE TO THE TESTIMONY OF THE PLAINTIFF'S WITNESS DESPITE THE UNCERTAINTIES, INCONSISTENCIES, CONTRADICTIONS AND OTHER INFIRMITIES RELATIVE TO SAID TESTIMONY.
>
> III
>
> THE LOWER COURT GRIEVOUSLY ERRED IN REJECTING THE THEORY OF THE DEFENSE THAT THE ALLEGED INDEBTEDNESS WAS A GAMBLING DEBT, HENCE IT CANNOT BE MADE LEGALLY COLLECTIBLE AGAINST THE DEBTOR.

The facts of this case indicate that:

Plaintiff-appellee, a businessman is a 67-year old Chinese citizen and a close friend of defendant-appellant, having known each other

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for a long time (TSN, October 1, 1977, pp. 4-6). Plaintiff had organized mahjong sessions for recreation in which defendant-appellant was a constant participant. During the period covering April 6, 1975 to June 29, 1975, defendant borrowed from plaintiff various amounts of money, which totalled P16,750.00 (*ibid.*, pp. 10-11), to pay off his mahjong losses to others (*ibid.*, p. 6, pp. 12-13), promising to pay the same on demand. As the amount of defendant's borrowings increased, plaintiff began asking the former for payments. Defendant, in fact, paid said plaintiff the amount of P1,050 (*ibid.*, pp. 10-11; TSN, October 24, 1979, p. 4), leaving a balance of P15,700. Plaintiff repeatedly demanded from defendant the full settlement of the said indebtedness (TSN, October 1, 1979, p. 15). Exasperated, plaintiff-appellee sought advice from Judge Ernesto A. Madamba, a personal friend known to him for more than 15 years going back to the time when plaintiff was still in Laoag, Ilocos Norte (TSN, June 20, 1979, pp. 5-6; p. 15). A friend willing to help, Judge Madamba, together with one Jose Palanca, accompanied plaintiff sometime in the middle part of December 1977 to see defendant in his business establishment at Binondo, Manila. In front of plaintiff, Judge Madamba, Jose Palanca, defendant's brother and defendant's son, appellant acknowledged his indebtedness to plaintiff and promised his payment within a week's time (TSN, June 20, 1979, pp. 10-16). For defendant's continued refusal to pay his indebtedness despite his promises, plaintiff caused a letter of demand to be written and delivered to defendant (Exhibit B, TSN, October 21, 1979, pp. 17-18; TSN, October 1, 1979, pp. 19-20). Defendant did not bother to acknowledge or reply to the said letter. In due time, plaintiff sought judicial intervention by filing a collection suit against defendant.

In his defense, defendant-appellant, also a businessman, denied having borrowed any amount from plaintiff-appellee (Decision as quoted in Appellant's Brief, p. 3; also TSN, April 23, 1980, p. 8). Without commenting on or denying his meeting with Judge Madamba, plaintiff, and others sometime on December 1977, defendant likewise alleged that he had money in the bank during the period from April, 1975 to June, 1975 (TSN, April 23, 1980, pp. 8-9), presenting in evidence the ledger of his bank account to support his claim. On cross-examination, defendant admitted that he had occassionally played mahjong in the period under consideration (*Ibid.*, pp. 15-16).

In his first two assignments appellant attacks the decision because he claims it is not supported by evidence. However, defendant merely denies without corroboration plaintiff's testimony as well as exhs.

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A, A-1 & A-2 where he admits his indebtedness. Appellant did not deny or present any evidence to contradict the testimony of Judge Madamba that appellant admitted his indebtedness to him.

Appellant just relied on the fact that he had money in the bank and there was no need for him to borrow. However, money in the bank does not mean he will not borrow if he needed cash immediately to pay his mahjong losses. His immediate need of cash therefore prompted the borrowings.

Furthermore, this whole case hinges on the credibility of witnesses; that of the plaintiff and Judge Madamba and that of defendant. In this situation, the appreciation and findings of the trial court deserve the greatest weight.

> "An examination of the meticulously prepared brief for the accused Dalili by counsel *de officio* rapidly shows that the sixteen assignments of errors are mostly concerned with the evaluation of evidence and determination of the credibility of witnesses. It is a fundamental rule that conclusion and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidences, as well as to observe the demeanor of the witnesses while testifying in the case." (*People vs. Dalili*, 92 SCRA 552, 560-561)

Here We find nothing that will show that the Court had not appreciated the testimonial evidence properly or failed to appreciate a material fact.

As to the defense that this is a gambling debt, suffice it to say that plaintiff was not playing with defendant, the latter lost to other players and just borrowed money from plaintiff who was not playing to cover his losses. This therefore is not a gambling debt and therefore recoverable.

WHEREFORE, finding this appeal without merit, We AFFIRM *in toto* the judgment of the Court *a quo* dated October 7, 1980, with costs against appellant.

SO ORDERED.

We agree completely with the decision of the IAC both in its factual findings and its legal doctrines. The facts as found are of course conclusive on Us, the exceptions to such finality

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not being applicable in the instant case, and We find nothing erroneous in the legal pronouncements made.

We now deal with the assigned alleged errors:

Re-credibility of private respondent and his witness Judge Madamba, and the existence of a mahjong joint.[1] The fact that private respondent Lu It is the maintainer of a gambling house who has obtained no license therefor is no argument against his credibility. And while Judge Madamba had admitted being a cockfight "aficionado", accustomed to betting thousands of pesos this circumstance cannot downgrade his categorical testimony that private petitioner had admitted before him and several others that he indeed owed Lu It the sum prayed for. Petitioner contends he could not possibly have borrowed money from Lu It from time to time since he (petitioner) was "very solvent", with money in the bank and a business of his own; while Lu It was a mere "trucking agent" with no office of his own as such agent. Be it noted however that as operator of a gambling joint, Lu It must have been in daily possession of sizeable cash which might be needed precisely to serve the cash requirements of his regular customers. We must not forget too that a gambling operator collects a heavy "tong" or fee from the winners in the games. As to the bank deposit of petitioner, suffice it to say that there are many bank depositors who find need to occasionally borrow money elsewhere due to immediate need, and this is particularly true in the case of gambling losers at a gambling joint. Petitioner's argument that if indeed it was true that he was indebted to Lu It, the latter could have just set-off part of it with the rentals he was supposed to pay petitioner for the use of petitioner's premises, is not tenable. Lu It could have had any number of reasons for not making any off-setting. For instance, he must have wanted to retain petitioner's good will both as a regular customer and as a lessor, who could continue to provide him with a convenient place for the gambling business.

Re — right of a loser in a game of chance to recover what he has lost. Art. 2014 of the Civil Code provides:

[1] Assigned Errors, 1, 2, and 3.

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"No action can be maintained by the winner for the collection of what he has won in a game of chance. But *any loser in a game of chance may recover his loss from the winner, with legal interest from the time he paid the amount lost and subsidiarily from the operator or manager of the gambling house.*"

It will readily be observed that the article cited has no application in the instant case. Firstly, Lu It did not sue to recover money he had lost in gambling, nor to obtain money he had won therein. Rather, he was suing to recover money which petitioner had borrowed from him to pay off gambling debts incurred in favor of *others*. Secondly, while Lu It was admittedly the operator of the gambling joint, his alleged *subsidiary* liability cannot arise absent a direct suit against *those primarily* liable for petitioner's losses, namely, the mahjong winners (persons who are not even identified in the case) and, absent furthermore said winners' proven inability to pay.

WHEREFORE, the assailed decision and resolution are hereby AFFIRMED and this petition is hereby DENIED, with costs against petitioner.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 74586. October 17, 1986]

SERVICEWIDE SPECIALISTS, INCORPORATED, *petitioner, vs.* **THE SHERIFF OF MANILA, DEPUTY SHERIFF ENRIQUITO A. VIOLETA and ROY DIAZ,** *respondents.*