



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**THIRD DIVISION**

**NILDA ELERIA ZAPANTA AND  
HUSBAND GERMAN V. ZAPANTA,**  
Petitioners,

**G.R. No. 248063**

Present:

- versus -

LEONEN, J.,  
*Chairperson,*  
CARANDANG,  
ZALAMEDA,  
ROSARIO, and  
LOPEZ, J.,\* JJ.

**RUSTAN COMMERCIAL  
CORPORATION,**  
Respondent.

Promulgated:

September 15, 2021

*MisDCEB-H*

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**DECISION**

**CARANDANG, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules), assailing the Decision<sup>2</sup> dated March 14, 2019 and Resolution<sup>3</sup> dated June 27, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 108207 filed by petitioners Nilda Eleria Zapanta (Nilda) and her husband German V. Zapanta (German) (collectively, Sps. Zapanta).

**Antecedents**

Rustan Commercial Corporation (RCC) operates a chain of department stores and sells gift certificates that may be used to pay for goods and merchandise in any of the stores owned by Rustan Group of Companies. Nilda was RCC's credit and collection manager. She was responsible for processing and approving applications for credit accommodations, discount card

\* Designated as additional Member per Special Order No. 2834.

<sup>1</sup> *Rollo*, pp. 12-34.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Danton Q. Bueser and Rafael Antonio M. Santos; *id.* at 42-69.

<sup>3</sup> *Id.* at 71-72.

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applications, guarantor's applications, and checking, monitoring, and implementing credit and debt collection processes, policies, and regulations. German is being sued in his capacity as Nilda's husband.<sup>4</sup>

In 2001, RCC conducted an audit on its Credit & Collection Department then headed by Vice President for Internal Audit, Edna G. De Leon (De Leon). The Audit Department found discrepancies between the general and subsidiary ledgers, and differences between the balances in the subsidiary ledger and the aging reports that the Credit and Collection Department submitted. The Audit Department recommended that a daily reconciliation of transactions and a monthly reconciliation of balances be made. From the daily reconciliation of transactions, De Leon noticed that there were gift certificates purchased on charge basis, where the charge chit documents (CCGC) were not forwarded to the Accounting Department. The Audit Department conducted an investigation and summoned the personnel who issued said gift certificates. After the audit, it was discovered that the irregularities and discrepancies in the ledgers were from the gift certificate purchases under the account name of a certain Rita Pascual.<sup>5</sup>

On January 27, 2003, Flocerfida M. Vergara (Vergara), then Vice President for Administration and Finance of RCC, accompanied by De Leon, Head of Store Operations Vida Estrella (Estrella), and Atty. Romeo Alcantara (Atty. Alcantara), went to Nilda's house to ask if she needed help collecting from the Rita Pascual account. At that time, Nilda had not been reporting to work. Nilda told them that she was having problems with Rita Pascual and could not locate her as the latter went into hiding.<sup>6</sup> When asked whether Rita Pascual actually existed, Nilda turned over Rita Pascual's Charge Account Application Form. There was an annotation on the form stating "old applicant/customer" handwritten by Nilda with a check mark on the space for "Approved".<sup>7</sup>

When Nilda was asked about the gift certificates she ordered on January 13, 2003 amounting to ₱600,000.00, Nilda said that the gift certificates and the CCGCs were still with her and turned them over to the team. Nilda told them that she would be submitting a letter of explanation concerning the Rita Pascual account.<sup>8</sup>

The team proceeded with the investigation and summoned several RCC employees. According to Pilita Guerra, concierge clerk, Nilda did not follow the standard operating procedure for purchases of gift certificates when the purchase was made under the account of Rita Pascual.<sup>9</sup>

The standard operating procedure observed by RCC is as follows: Gift certificates are issued to account holders personally when they go to the

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<sup>4</sup> Id. at 43

<sup>5</sup> Id.

<sup>6</sup> Id. at 44.

<sup>7</sup> Id. at 43-44.

<sup>8</sup> Id. at 44.

<sup>9</sup> Id.

Information Counter at Rustan's and inquire about the purchase of gift certificates from the information/ concierge clerks. The account holder would first be required to present their credit card, an in-house Rustan's credit card, to show that they have a credit line with the company. After the gift certificate is issued, the CCGC is issued. The CCGC is the receipt and proof of purchase when gift certificates are bought on credit. The CCGCs are to be signed by the cardholder in the presence of the concierge staff inside the store and issued in three copies: one for the customer, two left at the store. The copies of the CCGC left at the store are forwarded to the Accounting Department which, in turn, forwards one copy to the Credit and Collection Department. The Credit and Collection Department is in charge of recording the purchase into the ledgers of the pertinent Charge Account. Aging reports are then made and become basis for billings sent to customers for collection.<sup>10</sup>

Ricky Munoz (Munoz), posting clerk at the Credit and Collection Department, had the duty of posting all transactions into ledgers, except the Rita Pascual transactions.<sup>11</sup> Nilda instructed Munoz that she would personally report and handle all documents, including CCGCs pertaining to the Rita Pascual account.<sup>12</sup>

It was also discovered that Nilda entered into many transactions in excess of her authority as manager of the Credit and Collection Department. In violation of the standard operating procedure, the copies of the CCGCs for purchases under the Rita Pascual account that should be left at the store were never returned by Nilda after she got hold of them. Between December 31, 1999 and January 13, 2003, various purchases of gift certificates through the account of Rita Pascual amounting to ₱78,120,000.00 were made under Nilo Cabrante, messenger of the Credit and Collection Department, and Nilda's watch. The team tried to look for Rita Pascual but could not find her in the address stated in the charge account application form.<sup>13</sup>

When the investigation team traced the gift certificates ordered by Nilda through their control numbers, they discovered that she sold the gift certificates to third persons who used them to make purchases from Rustan's. Among those people were Sps. Alberto and Lucita Flores. Alberto Flores testified that between 1998 and 2003, Nilda sold them gift certificates at discounted rates of up to seven to eight percent amounting to more than ₱60,000,000.00. Sps Flores showed the team their bank book, which reflected the withdrawals on dates very close to Nilda's acquisition of gift certificates from the store. Alberto Flores added that beginning 1998, Nilda stopped issuing receipts either from her or from RCC for his purchases. Nilda also allegedly instructed him that should anyone ask him where he got his gift certificates, he should say that they came from Rita Pascual.<sup>14</sup>

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<sup>10</sup> Id. at 45, 491-492.

<sup>11</sup> Id. at 482.

<sup>12</sup> Id. at 45, 493.

<sup>13</sup> Id. at 432.

<sup>14</sup> Id. at 53



RCC issued a memorandum to Nilda, giving her an opportunity to explain. Instead of explaining, Nilda submitted her retirement letter, expressing her desire to leave the company for health reasons. This was not accepted by RCC. Thereafter, RCC sent Nilda a demand letter. Failing to heed RCC's demand for payment, RCC filed a complaint for payment of sum of money and damages with prayer for issuance of writ of preliminary attachment.<sup>15</sup>

On February 10, 2003, the Regional Trial Court (RTC) issued an Order,<sup>16</sup> granting the application for the issuance of a writ of preliminary attachment of RCC. Subsequently, on February 21, 2003, the RTC issued a writ of preliminary attachment,<sup>17</sup> instructing the branch sheriff to "attach the estate, real and personal, not exempt from execution of the defendants NILDA ELERIA ZAPANTA and husband GERMAN V. ZAPANTA."<sup>18</sup> Among the personal properties levied upon were two Honda Civic motor vehicles with plate numbers HYP 888 and WAR 342<sup>19</sup> that turned out to be registered under the name of Sps. Zapanta's son, Gerard Angelo E. Zapanta.<sup>20</sup>

On August 3, 2015, Sps. Zapanta filed a Demurrer to Evidence.<sup>21</sup> However, the RTC denied Sps. Zapanta's Demurrer to Evidence in an Order dated September 23, 2015. The RTC was convinced that RCC presented sufficient evidence to support its allegations in the complaint. The RTC explained that the allegations of Sps. Zapanta were matters of defense and factual and evidentiary in nature that may be fully proven by submission of contravening evidence during trial.<sup>22</sup>

The defense moved for reconsideration<sup>23</sup> but this was denied in an Order dated November 24, 2015.<sup>24</sup>

On May 20, 2016, Sps. Zapanta, for the fifth time, failed to present evidence. The RTC deemed this repeated failure a waiver of Sps. Zapanta's right to present evidence.<sup>25</sup>

### **Ruling of the Regional Trial Court**

On September 15, 2016, the RTC rendered its Decision<sup>26</sup> the dispositive portion of which states:

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<sup>15</sup> Id. at 53-54.

<sup>16</sup> Records, p. 212.

<sup>17</sup> Id. at 209-210.

<sup>18</sup> Id. at 210.

<sup>19</sup> Id. at 219a.

<sup>20</sup> Id. at 311-312; *rollo*, p. 16.

<sup>21</sup> *Rollo*, pp. 312-319.

<sup>22</sup> Id. at 348.

<sup>23</sup> Id. at 350-355.

<sup>24</sup> Penned by Judge Carlos A. Valenzuela; id. at 356.

<sup>25</sup> Id. at 57.

<sup>26</sup> Penned by Judge Carlos A. Valenzuela; id at 429-498.

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff, Rustan Commercial Corporation, and against the defendant Nilda Eleria Zapanta, the latter is ordered to pay the plaintiff the following amounts:

- a.) Seventy Eight Million One Hundred Twenty Thousand Pesos [P78,120,000.00], as and by way of actual damages for the total cost of the Gift Certificates she ordered from plaintiff's Makati Store;
- b.) Two Million Eight Hundred Eleven Thousand Four Hundred Eighty Nine Pesos & 50 centavos [P2,811,489.50] as cost of filing and docket fees, expenses and costs of litigation; and
- c.) Ten per cent [10%] of the total of [a] & [b], or in the amount of Eight Million Ninety Three Thousand One Hundred Forty Eight Pesos & 95 centavos [P8,093,148.95], as and by way of Attorney's Fees.

Finally, the Preliminary Attachment on the properties of defendants under TCT No. T(46942)118948, a house and lot located at No. 26 Las Vegas St., Merville Subdv., Parañaque City and another property under Tax Declaration Nos. 992800700029 and 992800700030, a parcel of land with improvements thereon located in Siniloan, Laguna, and two (2) dilapidated motor vehicles, is ordered PERMANENT.

SO ORDERED.<sup>27</sup>

The RTC found that Nilda undertook to personally handle the Rita Pascual account in dire violation of company policies.<sup>28</sup> She ordered the gift certificates without signing them in the presence of the concierge. She intercepted the CCGCs and instructed Munoz that she would personally do the posting on the Rita Pascual account and report directly to management.<sup>29</sup>

For the RTC, RCC was able to establish the fraud perpetrated by Nilda. The purported charge application form of Rita Pascual as prepared by Nilda since the handwriting on the form was hers. Nilda intercepted all Rita Pascual-related documents forwarded to the Credit & Collection Department.<sup>30</sup> On December 23, 2002 and January 13, 2003, Munoz received photocopies of CCGCs pertaining to the Rita Pascual account from Lilian Noble, Nilda's former secretary. Munoz never saw the originals. Munoz was instructed by Nilda to put the Rita Pascual's unpaid account in the cancel column of the ageing accounts, which was improper as only paid accounts are transferred to that column.<sup>31</sup> The hints of fraud were bolstered by Alberto Flores's testimony.<sup>32</sup> The RTC concluded that Nilda obtained gift certificates from RCC, sold them to Sps. Flores at a discount, then pocketed the proceeds of the

<sup>27</sup> Id. at 498.

<sup>28</sup> Id. at 493.

<sup>29</sup> Id. at 58.

<sup>30</sup> Id. at 58, 480-481, 488, 493-494.

<sup>31</sup> Id. at 58, 483, 494

<sup>32</sup> Id. at 486, 489-490, 494

sale.<sup>33</sup> The fact that she took personal interest in handling the Rita Pascual account, thereby concealing its status, was a clear indication of deceit and deception.<sup>34</sup>

In an Order<sup>35</sup> dated December 1, 2016, the Motion for Reconsideration filed by Sps. Zapanta was denied.

### **Ruling of the Court of Appeals**

In a Decision<sup>36</sup> dated March 26, 2019, the CA denied the appeal of Sps. Zapanta and affirmed the Decision of the RTC.<sup>37</sup>

The CA found that the RTC did not deprive Sps. Zapanta of their right to due process. The hearing for the initial presentation of defense evidence was reset seven times, five times of which were due to Sps. Zapanta's fault. The resetting of hearings took over a year, only for Sps. Zapanta to say that they could not locate witnesses whose appearance they could have secured as soon as trial started.<sup>38</sup> They were notified of all hearings and were always represented by counsel. The RTC granted Sps. Zapanta's several motions for resetting, and even issued subpoenas to assist the defense in procuring their witnesses' appearance in court. For the CA, Sps. Zapanta had sufficient opportunity to argue their defense through their Answer, Memorandum, and Motion for Reconsideration.<sup>39</sup>

The CA also ruled that the evidence of RCC establishing the fraudulent scheme employed by Nilda was overwhelming.<sup>40</sup> RCC was able to establish that Nilda obtained gift certificates from RCC using the Rita Pascual charge account. In this case, the CCGCs needed to be signed by the customer in front of the concierge in triplicate, with two copies left with the concierge for forwarding to the Accounting Department. Nilda collected the gift certificates and the CCGCs, telling the staff that she would have Rita Pascual sign the CCGCs.<sup>41</sup> The scheme involved Nilda intercepting the billing and collection methods by obtaining the gift certificates, taking the CCGCs with her, and volunteering to personally handle the charge account she used in ordering.<sup>42</sup> With no one monitoring the fictitious Rita Pascual charge account, all of the proceeds of the gift certificate sales made to Sps. Flores went to the Rita Pascual account without remitting the same to RCC.<sup>43</sup>

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<sup>33</sup> Id. at 58, 486, 489-490, 496-497.

<sup>34</sup> Id. at 59, 495.

<sup>35</sup> Penned by Judge Carlos A. Valenzuela; id. at 500.

<sup>36</sup> Supra note 2.

<sup>37</sup> *Rollo*, p. 69.

<sup>38</sup> Id. at 64.

<sup>39</sup> Id. at 65.

<sup>40</sup> Id. at 66.

<sup>41</sup> Id. at 67.

<sup>42</sup> Id. at 67-68.

<sup>43</sup> Id. at 68.



In a Resolution<sup>44</sup> dated June 27, 2019, the CA denied the Motion for Reconsideration Sps. Zapanta filed.<sup>45</sup>

In the present petition, Sps. Zapanta maintain that they were deprived of due process.<sup>46</sup> They insist that RCC failed to state a cause of action in the complaint filed against Nilda because there was no act or omission on the part of Sps. Zapanta violating RCC's right. It was one Rita Pascual who filed a credit application and that the processing and approval of discount card applications were vested exclusively in the director of store operation under the Office of the President. Sps. Zapanta posit that it was Flocerfida M. Vergara, RCC's Director for Administration and Nilda's immediate supervisor, who was vested with the processing and approval of guarantor's application.<sup>47</sup> They also argue that there was no sufficient evidence to declare Nilda liable for the amount claimed.<sup>48</sup>

In its Comment,<sup>49</sup> RCC insists that there is sufficient proof that Nilda defrauded RCC in the amount of ₱78,120,000.00 by using a false account to facilitate the issuance of gift certificates, the proceeds of which she appropriated for her benefit.<sup>50</sup> RCC also maintains that Sps. Zapanta were accorded due process. RCC points out that they did not question the RTC Order dated May 20, 2016 declaring that their failure to present evidence was deemed a waiver of their right to do so.<sup>51</sup> The alleged denial of due process was also not raised in their Memorandum.<sup>52</sup> RCC also points out that the trial court allowed numerous re-settings from February 16, 2015 until May 20, 2016 and accorded multiple opportunities for Sps. Zapanta to present their witnesses. The RTC even warned Sps. Zapanta to be "responsible for the appearance of their witness on the next hearing" yet they still failed to present their evidence.<sup>53</sup> RCC stresses that Nilda did not even attempt to take the opportunity to explain why she held those gift certificates or why she sold them at a discount to other persons considering that she was listed as a witness in the Pre-trial Brief.<sup>54</sup>

### Issues

The issues to be resolved are:

1. Whether Sps. Zapanta were denied their right to due process;
2. Whether RCC failed to state a cause of action against Nilda;
3. Whether Sps. Zapanta are liable for the gift certificates Nilda purchased from RCC through a fictitious charge account that remains

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<sup>44</sup> Supra note 3.

<sup>45</sup> *Rollo*, p. 72.

<sup>46</sup> Id. at 20-21.

<sup>47</sup> Id. at 21-26.

<sup>48</sup> Id. at 26-32.

<sup>49</sup> Id. at 512-540.

<sup>50</sup> Id. at 534-537.

<sup>51</sup> Id. at 537-538.

<sup>52</sup> Id. at 538.

<sup>53</sup> Id. at 538-539.

<sup>54</sup> Id. at 540.

unpaid; and

4. Whether the trial court properly ordered the attachment of properties allegedly owned by Sps. Zapanta to secure the monetary award in favor of RCC.

### **Ruling of the Court**

**The RTC did not deprive Sps. Zapanta of their right to due process.**

Sps. Zapanta were not deprived their right to due process. The hearing for the initial presentation of defense evidence was reset seven times, five times of which were due to Sps. Zapanta's fault. The resetting of hearings took over a year, only for Sps. Zapanta to say that they could not locate witnesses whose appearance they could have secured as soon as trial started.<sup>55</sup> They were notified of all the hearings and were always represented by counsel. The RTC granted Sps. Zapanta's several motions for resetting and even issued subpoenas to assist the defense in procuring their witnesses' appearance in court. Moreover, Sps. Zapanta had sufficient opportunity to argue their defense through their Answer, Memorandum, and Motion for Reconsideration.<sup>56</sup>

**RCC sufficiently stated a valid cause of action against Sps. Zapanta.**

Sps. Zapanta argue that the complaint<sup>57</sup> against them failed to state a cause of action because there was no action or omission on their part violating RCC's right.<sup>58</sup> Sps. Zapanta are mistaken.

It must be clarified that prior to the promulgation of the 2019 Amended Rules on Civil Procedure (2019 Amended Rules), the ground of failure to state a cause of action was found in Section 1, Rule 16 of the Rules of Court, which provides:

Section 1. *Grounds.* – **Within the time for but before filing the answer** to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(g) That **the pleading asserting the claim states no cause of action;**

x x x x (Emphases supplied)

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<sup>55</sup> Id. at 64.

<sup>56</sup> Id. at 65.

<sup>57</sup> Id. at 73-93.

<sup>58</sup> Id. at 21.



Following the amendments introduced in the 2019 Amended Rules, this ground is now provided in Section 12, Rule 8, to wit:

Section 12. *Affirmative defenses.* – (a) A defendant shall raise his or her affirmative defenses in his or her answer, which shall be limited to the reasons set forth under Section 5(b), Rule 6, and the following grounds:

x x x x

4. That the pleading asserting the claim states no cause of action; and

x x x x

Noticeably, while Section 1, Rule 16 of the Rules specifically states the period within which the affirmative defense of failure to state a cause of action may be invoked, paragraph (a) Section 12, Rule 8 of the 2019 Amended Rules does not contain the same provision. Nevertheless, paragraph (b) of the same provision explicitly states that “[f]ailure to raise the affirmative defenses at the earliest opportunity shall constitute a waiver thereof.”

In this case, Sps. Zapanta raised in their Answer that RCC failed to state a valid cause of action.<sup>59</sup> However, even if We consider this defense at this stage of the proceedings, We are still not persuaded that RCC failed to state a valid cause of action against Sps. Zapanta.

It is settled that to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint. The test of the sufficiency of the facts alleged in the complaint to constitute a cause of action is whether, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. Hence, in moving to dismiss a complaint on this ground, the defendant hypothetically admits the truth of the facts alleged in the complaint.<sup>60</sup>

A careful reading of the Complaint<sup>61</sup> would show that RCC sufficiently stated that, Nilda, in her capacity as collection manager of RCC, through act or omission, permitted large quantities of gift certificates to be released to one Rita Pascual, who turned out to not only to be a delinquent account but also non-existent. It was alleged in the Complaint that:

If payments were at all made by, or for the account of, “Rita Pascual”, defendant-Nilda has pocketed and deliberately failed and refused to turnover the money and did not account to plaintiff the details of the payment, if any were made;<sup>62</sup>

<sup>59</sup> Id. at 104-105.

<sup>60</sup> Herrera, Oscar M., *Remedial Law* (Volume 1) (2007 edition), p. 1030, citing *Consolidated Dairy Products v. Court of Appeals*, 287 Phil. 898 (1992) and *Uy v. Evangelista*, 413 Phil. 403 (2001).

<sup>61</sup> *Rollo*, pp. 73-93.

<sup>62</sup> Id. at 89.

To Our mind, the paragraph quoted above, taken together with the other material averments in the Complaint of RCC, sufficiently states a valid cause of action for RCC to pursue a collection case against Sps. Zapanta. RCC is entitled to the proceeds of the gift certificates issued for the Rita Pascual account. It was alleged that through Nilda's act or omission as Collection manager, the liability of the Rita Pascual account ballooned without being settled. RCC alleges that if there is any payment made, Nilda did not turn over the proceeds to RCC. Thus, the allegations in the Complaint, when hypothetically admitted, are sufficient to grant the reliefs prayed for by the plaintiff.

**German, the husband of Nilda,  
was correctly impleaded  
in the collection suit.**

While the allegations in the Complaint mainly fault Nilda for the unpaid account of one Rita Pascual, the plaintiff was correct in including German, Nilda's husband, in the collection suit instituted against her.

Section 4, Rule 3 of the Rules states:

Section 4. *Spouses as parties.* – Husband and wife shall sue or be sued jointly, except as provided by law.

As a general rule, the husband and wife shall sue or be sued jointly<sup>63</sup> as they are co-administrators of the community property under the system of absolute community of property regime, as well as the conjugal partnership regime under the Family Code.<sup>64</sup> In this case, impleading German was proper as RCC prayed for the attachment of properties that may form part of the absolute community of property or conjugal partnership of Nilda and German. However, this does not mean that they are equally liable for the obligation that may arise out of the collection suit.

While the Court is bereft of information as to which property regime is observed by Sps. Zapanta, it is worthy to point out that both the absolute community of property and conjugal partnership regime impose similar restrictions with respect to obligations contracted by either spouse without the consent of the other. Article 94(3) and Article 121(3) of the Family Code state:

Article 94. The absolute community of property shall be liable for:

x x x x

(3) Debts and obligations contracted by either spouse without the consent of the other **to the extent that the family may have been benefitted;**

<sup>63</sup> RULES OF COURT, Rule 3, Section 4.

<sup>64</sup> Herrera, Oscar M., Remedial Law (Volume 1) (2007 edition), p. 559.

x x x x

Article 121. The conjugal partnership shall be liable for:

x x x x

(3) Debts and obligations contracted by either spouse without the consent of the other **to the extent that the family may have been benefitted;**

x x x x (Emphasis supplied)

To bind the absolute community of property or the conjugal partnership, actual benefit to the family must be proved. The party asserting their claim against the absolute community of property or the conjugal partnership has the burden of proving that it is chargeable against the property regime of the spouses.

In this case, German cannot escape the joint and solidary liability to pay the obligation arising from Nilda's fraudulent scheme in pocketing the proceeds from the sale of the gift certificates of RCC. Without any evidence to the contrary, it is presumed that the proceeds of the loan redounded to the benefit of their family. Hence, their conjugal partnership or community property is liable.

**RCC proved through preponderance of evidence that Sps. Zapanta are liable for the unpaid gift certificates issued to the Rita Pascual account.**

In civil cases, such as the present collection suit, the quantum of evidence to be observed is preponderance of evidence. It refers to:

Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.



When the evidence of the parties are evenly balanced or there is doubt on which side the evidence preponderates, the decision should be against the party with the burden of proof, according to the equipoise doctrine.<sup>65</sup> (Citations omitted)

Here, the voluminous records of evidence presented by RCC sufficiently established the participation and liability of Nilda in the fraudulent scheme employed to evade paying the gift certificates issued to the Rita Pascual account.

As correctly ruled by the CA, the evidence of RCC establishing the fraudulent scheme employed by Nilda was overwhelming.<sup>66</sup> RCC was able to establish that Nilda obtained gift certificates from RCC using the Rita Pascual account. In this case, the CCGCs needed to be signed by the customer in front of the concierge in triplicate, with the two copies left with the concierge for forwarding to the Accounting Department. Nilda collected the gift certificates and the CCGCs, telling the staff that she would have the CCGCs signed by Rita Pascual.<sup>67</sup> The scheme involved Nilda intercepting the billing and collection methods by obtaining the gift certificates, taking the CCGCs with her, and volunteering to personally handle the charge account of Rita Pascual.<sup>68</sup> With no one monitoring the fictitious Rita Pascual account, all of the proceeds of the gift certificate sold to Sps. Flores were charged to the Rita Pascual account though these were not remitted to RCC.<sup>69</sup> When Alberto Flores was questioned about his payment arrangement with Nilda for his purchases, he explained:

At first, I paid in cash at a discounted price of between seven percent (7%) to eight percent (8%) payable in seven (7) days after her delivery of the Gift Certificates. One time, I and my wife paid our standing balance with her through her current account with Bank of the Philippine Island (BPI). Eventually, when my buyers for RCC Gift Certificates increased, I paid Nilda Zapanta spot cash.<sup>70</sup>

Although it was one Rita Pascual who allegedly opened a charge account with RCC, the person responsible for facilitating all purchases of gift certificates under the account in violation of the standard operating procedures of RCC was Nilda. She used her position in RCC and her knowledge of its operations in order to prevent the rising balance of the Rita Pascual account from being flagged by audit.

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<sup>65</sup> *Aba v. De Guzman, Jr.*, 678 Phil. 588, 601 (2011).

<sup>66</sup> *Rollo*, p. 66.

<sup>67</sup> *Id.* at 67.

<sup>68</sup> *Id.* at 67-68.

<sup>69</sup> *Id.* at 68.

<sup>70</sup> *Records*, p. 598.



**The lower court erred in ordering the attachment of two motor vehicles owned by Gerard to secure the monetary award in favor of RCC in its collection case against Sps. Zapanta.**

It must be pointed out that neither of the parties raised the validity of the order of attachment of Sps. Zapanta's properties of the trial court. Section 8, Rule 51 of the Rules provides:

Section 8. Questions that may be decided. – No errors which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

As a rule, a court does not have “power to decide questions except [these] presented by the parties in their pleadings.”<sup>71</sup> No error not assigned and argued may be considered unless such error: (1) is closely related to or dependent on an assigned error; or (2) affects the jurisdiction over the subject matter on the validity of the judgment.<sup>72</sup> The courts have ample authority to rule on matters not raised by the parties in their pleadings if such issues are indispensable or necessary to the just and final resolution of the pleaded issues.<sup>73</sup>

In the present case, the resolution of the propriety of the order of attachment issued by the trial court on two vehicles owned by Gerard, who is not impleaded in the collection suit, is indispensable in the determination of the rights and liabilities of each party and cannot be dismissed lightly. Hence, We deem it prudent to resolve this matter.

It must be pointed out that the two motor vehicles attached by the RTC in favor of RCC are under the name of Sps. Zapanta's son, Gerard. RCC contends that Sps. Zapanta are the beneficial owners of the subject vehicles registered under the name of Gerard who did not have, and may still not have any gainful employment to afford the Honda Civic LXI 2000 and Honda Civic SIR 2001 valued at ₱400,000.00 and ₱600,000.00, respectively, at the time of purchase.<sup>74</sup>

After a careful review of the voluminous records of the case, We find that RCC failed to establish any involvement of Gerard in the fraudulent scheme imputed to Nilda to justify the attachment of his two motor vehicles. All witnesses of RCC point only to Nilda as the person behind the scheme. The only basis for RCC's claim that these vehicles should be included in the

<sup>71</sup> *Asian Transmission Corporation v. Canlubang Sugar Estates*, 457 Phil. 260, 285 (2003).

<sup>72</sup> *Multi-Realty Development Corp v. Makati Tuscan Condominium Corp.*, 524 Phil. 318, 321 (2006).

<sup>73</sup> *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, 480 Phil. 545, 561 (2004).

<sup>74</sup> *Rollo*, p. 443.

levied properties is the unsubstantiated claim of RCC that Gerard had no gainful employment when these vehicles were purchased, thereby implying that he has no financial means to pay for them. RCC failed to even demonstrate how Sps. Zapanta became the beneficial owners of the subject vehicles to justify the inclusion of these despite having no participation in the fraudulent scheme Nilda employed.

Even assuming that Sps. Zapanta were the beneficial owners of the vehicles, it was incumbent upon RCC to adduce sufficient evidence to establish such fact. We cannot simply rely on bare insinuations and conjectures to justify the attachment of Gerard's vehicles. He is not even a party to this collection suit.

It is settled that a mere allegation is not evidence, and they who allege have the burden of proving their allegations with the requisite quantum of evidence, which is preponderance of evidence.<sup>75</sup> Here, not only was Gerard's participation not established, he was not even impleaded in the collection case against his parents. As a consequence of the erroneous attachment, he was deprived of his property without due process of law. Therefore, the Court finds that the two vehicles registered under the name of Gerard should not have been included in the inventory of properties attached as a consequence of this collection suit.

### Legal interest

In accordance with the Court's ruling in the case of *Nacar v. Gallery Frames*,<sup>76</sup> RCC is entitled to legal interest. In *Nacar*, the Court, modified the imposable interest rates on the basis of Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799, which took effect on July 1, 2013, thus:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be **6% per annum** to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the

<sup>75</sup> *Sps. Ramos v. Obispo*, 705 Phil. 221, 230 (2013).

<sup>76</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be **6% *per annum*** from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.<sup>77</sup> (Emphasis and italics in the original; Citation omitted)

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of six percent (6%) *per annum*.<sup>78</sup> Since the actual damages, were given by the RTC in its Decision dated September 15, 2016, the interest on the amount awarded shall be deemed to run beginning said date. Thus, the monetary award shall earn six percent (6%) interest *per annum* computed from the date of the Decision of the RTC, which is on September 15, 2016, until full satisfaction. Thereafter, the foregoing monetary award, plus attorney's fees and litigation expenses, shall begin to earn legal interest at six percent (6%) *per annum* from the finality of this Decision until full payment because during the interim period, the total monetary award is considered to be equivalent to a forbearance of credit.<sup>79</sup>

**WHEREFORE**, the Decision dated March 14, 2019 and the Resolution dated June 27, 2019 of the Court of Appeals in CA-G.R. CV No. 108207 are **AFFIRMED with MODIFICATION**. Petitioners Nilda Eleria Zapanta and German V. Zapanta are **ORDERED** to pay respondent Rustan Commercial Corporation the following:

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<sup>77</sup> Id. at 282-283.

<sup>78</sup> Id. at 282.

<sup>79</sup> Id. at 283.

- (a) ₱78,120,000.00, as and by way of actual damages for the total cost of the Gift Certificates she ordered from plaintiff's Makati Store;
- (b) ₱2,811,489.50, as cost of filing and docket fees, expenses, and costs of litigation;
- (c) ten percent (10%) of the total of (a) and (b), or in the amount of ₱8,093,148.95, as and by way of attorney's fees; and
- (d) interest on the total monetary award in (a), (b), and (c) at the rate of six percent (6%) *per annum* reckoned from September 15, 2016 until finality of judgment.

The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment thereof in compliance with the Court's ruling in *Nacar v. Gallery Frames*.

The Preliminary Attachment on the properties of defendants under TCT No. T(46942)118948, a house located at No. 26 Las Vegas St., Merville Subdivision, Paranaque City, and another property under Tax Declaration Nos. 992800700029 and 992800700030, a parcel of land with improvements thereon located in Siniloan, Laguna is made **PERMANENT**.

The respective attachments made on the Honda Civic LXI 2000 and Honda Civic SIR 2001 registered under the name of Gerard Angelo E. Zapanta, who is not a party in this collection suit, are **LIFTED**.

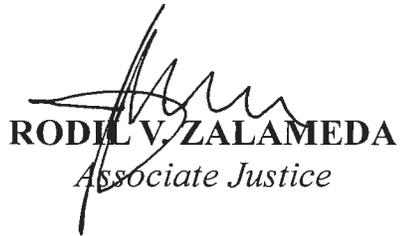
**SO ORDERED.**

  
**ROSMARIE D. CARANDANG**  
*Associate Justice*

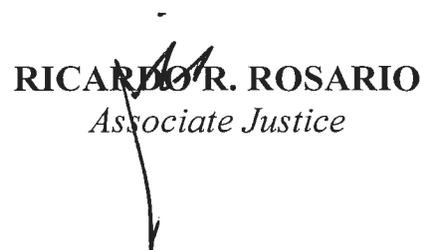
**WE CONCUR:**



**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*



**JHOSEP Y. LOPEZ**  
*Associate Justice*

**ATTESTATION**

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



**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
*Chief Justice*