

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ILOILO CITY GOVERNMENT CTA Case No. OC-028
represented by its CITY
MAYOR, HON. JERRY P. Members:
TREÑAS, and ILOILO CITY
TREASURER JINNY HERMANO, MANAHAN, Chairperson,
Plaintiffs, REYES-FAJARDO, and
ANGELES, JJ.

- versus -

LEMACEL TRADING
CORPORATION and JUAN Promulgated:
MANUEL V. LOPEZ, its
President,

Defendants.

DEC 27 2024

11:07 a.m.

x - - - - - x

RESOLUTION

For the Court's resolution is the defendants' *Demurrer to Evidence* filed on April 3, 2023 with plaintiff's *Comment/Opposition Ex Abundante Ad Cautelam with Reservations and Leave of Court (To the Defendants' Demurrer to Evidence)* filed via accredited courier and received by the Court on April 13, 2023.

The factual antecedents that led to the filing of the instant *Demurrer to Evidence* are as follows:

On June 30, 2021, plaintiffs posted a Complaint¹ which the Court received on July 27, 2021 seeking the collection of alleged local business tax (LBT) against defendants in the total amount of P33,883,713.58, exclusive of legal interests.

Summons was issued by the Court on October 18, 2021 ordering defendants to file their Answer to the Complaint within thirty (30) days from notice.

¹ Court Docket, Volume I, pp. 9-28.

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On January 10, 2022, defendants electronically filed their Answer *Ad Cautelam* which was followed by its filing via licensed courier and received by the Court on February 3, 2022.²

A Pre-Trial Conference was set by the Court on April 28, 2022 at 9:00 a.m.

Plaintiffs electronically filed their Pre-Trial Brief on April 21, 2022 and by licensed courier on April 20, 2022.³

Defendants filed their Pre-Trial Brief via licensed courier on April 25, 2022 which was received by the Court on April 26, 2022.⁴

Pre-Trial proceeded as scheduled on April 28, 2022 and on October 10, 2022, a Pre-Trial Order was issued by the Court.

On February 3, 2023, plaintiffs posted their Formal Offer of Exhibits via registered mail and received by the Court on February 23, 2023.

On March 24, 2023, the Court issued a Resolution admitting some of the exhibits offered by plaintiffs but denied the admission of the following, and we quote:

“However, the Court **DENIES** the admission of the following exhibits:

1. Exhibits “**P-5**”, “**P-6**”, “**P-7**”, “**P-8**”, “**P-9**”, “**P-10**”, “**P-11**”, “**P-12**”, “**P-13**”, “**P-14**”, “**P-15**”, “**P-16**”, “**P-17**”, “**P-18**”, “**P-19**”, “**P-22**”, “**P-23**”, “**P-24**”, “**P-25**”, “**P-26**”, “**P-27**”, “**P-28**”, and “**P-29**”, for failure to present the originals for comparison;¹
2. Exhibits “**P-32**”, “**P-36**”, and “**P-37**”, for failure to identify and to present the originals for comparison;
3. Exhibits “**P-34**” and “**P-35**”, for failure to identify; and
4. Exhibit “**P-42**”, for not being found in the records of the case and for failure to identify.”

² Court Docket, Volume I, pp. 227-260.

³ Court Docket, Volume I, pp. 442-461.

⁴ Court Docket, Volume II, pp. 512-528.

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On April 3, 2023, defendants filed the instant *Demurrer to Evidence*.

On April 4, 2023, plaintiffs filed via accredited courier a Motion for Leave of Court to Tender Excluded Evidence as a response to the Court's Resolution dated March 24, 2023.

A hearing was held on April 12, 2023 where both parties presented their arguments on defendants' *Demurrer to Evidence*. In that same hearing, the Court ordered both parties to submit their respective memoranda to address plaintiffs' Motion for Leave of Court to Tender Excluded Evidence as well as defendants' *Demurrer to Evidence*.

On April 25, 2023, defendants filed their Memorandum electronically and via accredited courier on April 24, 2023 and received by the Court on April 25, 2023.

Plaintiffs' Memorandum of Authorities Re: (1) Propriety of Tender of Excluded Exhibits, and (2) Denial of Defendants' *Demurrer to Evidence* was filed electronically on April 25, 2023 and via licensed courier on April 24, 2023 and received by the Court on April 27, 2023.

On June 21, 2023, the Court issued a Resolution on plaintiffs' Motion for Leave of Court to Tender Excluded Evidence. We quote the relevant portions of the said Resolution as follows:

"However, considering that the remedy availed of by plaintiff is a mere Tender of Excluded Evidence and not a Motion for Reconsideration of the March 24, 2023 Resolution, the tender of the above copies of the excluded documentary evidence are simply noted.

WHEREFORE, in view of the foregoing, plaintiffs' **Motion for Leave of Court to Tender Excluded Evidence Pursuant to Section 40, Rule 133 of the Rules of Court as amended by A.M. No. 19-08-15-SC** is **GRANTED**. Accordingly, the Tender of Excluded Evidence is **NOTED** and Exhibits "**P-5**", "**P-6**", "**P-7**", "**P-8**", "**P-9**", "**P-10**", "**P-11**", "**P-12**", "**P-13**", "**P-14**", "**P-15**", "**P-16**", "**P-17**", "**P-18**", "**P-19**", "**P-22**", "**P-23**", "**P-24**", "**P-25**", "**P-26**", "**P-27**", "**P-28**", "**P-29**", "**P-34**", "**P-35**, and "**P-36**" are made part of the records of the case.

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Accordingly, defendants Demurrer to Evidence shall be deemed submitted for resolution.

SO ORDERED.”

On August 3, 2023, defendants filed a Motion for Reconsideration [RE: Resolution dated 21 June 2023] prompting the Court to issue an Order dated August 24, 2023 directing plaintiffs to file their comment within ten (10) days from notice. In this same Order, the defendants’ Demurrer to Evidence was held in abeyance pending the resolution of their Motion for Reconsideration.

In their Motion for Reconsideration, defendants argue that plaintiffs’ Motion for Leave of Court to Tender Excluded Evidence should be disallowed for non-compliance with the Rules of Court and that the evidence tendered were never formally offered, identified, nor presented before the Court.

On September 26, 2024, the Court issued a Resolution denying defendants’ Motion for Reconsideration [Re: Resolution dated 21 June 2023], the pertinent portions of which are quoted as follows:

“Hence, the plaintiff’s Tender of Excluded Evidence was merely noted by the Court and that only those excluded exhibits, which were specifically described in the formal offer, were considered to have formed part of the record of the case.

WHEREFORE, in view of the foregoing, defendants’ *Motion for Reconsideration [Re: Resolution dated 21 June 2023]* is **DENIED** for lack of merit. Accordingly, defendants Demurrer to Evidence filed on April 3, 2023 is now deemed submitted anew for resolution.

SO ORDERED.”

Defendants’ Arguments on their Demurrer to Evidence

Defendants argue that plaintiffs failed to establish with sufficient evidence that it is entitled to the reliefs prayed for in the Complaint for the following reasons:

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- a. Plaintiffs' own admission shows that defendant Mr. Juan Manuel Lopez is not being sued for the alleged deficiency LBT of Lemacel Trading Corporation;
- b. Plaintiffs' evidence clearly indicate that the Court has no jurisdiction to entertain the present collection case;
- c. The evidence admitted by the Court are insufficient to establish a case against the defendants; and
- d. Even if for the sake of argument that all of the exhibits were admitted, non-compliance with Section 171 of the Local Government Code (LGC) of 1991 is fatal to the determination of the alleged deficiency LBT of defendants.

Plaintiffs' Counter-Arguments

In their *Comment/Opposition*, plaintiffs rebut the allegation of lack of jurisdiction by stating that the amount involved is within the threshold cognizable by the Court pursuant to Republic Act (RA) No. 1125, as amended by RA 9282. Plaintiffs further assert that there was no admission on their part on the lack of liability of Mr. Juan Manuel Lopez because the latter was properly impleaded in his official capacity as President of defendant corporation.

As regards the insufficiency of evidence alleged by defendants, plaintiffs contend otherwise and maintain that the evidence it offered in Court shows that there is a significant discrepancy between the gross receipts declared by defendants to the Iloilo City Government for the payment of their business taxes *vis-a vis* the gross receipts reflected in their audited financial statements (AFS). Plaintiffs allege that the evidence they submitted in Court prove that fraud was committed by defendants with respect to the declaration of their gross receipts.

In their *Comment/Opposition*, plaintiffs also requested the Court to first resolve their Motion for Leave of Court to Tender Excluded Evidence before determining the merits of defendants' Demurrer to Evidence.

RULING OF THE COURT

The defendants' *Demurrer to Evidence* is impressed with merit.

Section 1, Rule 33 of the Revised Rules of Court reads as follows:

"Rule 33

Demurrer to Evidence

Section 1. *Demurrer to evidence.* – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence."

The Supreme Court has defined a *demurrer to evidence* as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue".⁵ What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the *facts and the law*.⁶ Be it noted that an order granting demurrer to evidence is a judgment on the merits, as ruled by the Supreme Court,⁷ viz:

"xxx An order granting demurrer to evidence is a judgment on the merits. This is because while a demurrer 'is an aid or instrument for the expeditious termination of an action,' it specifically 'pertains to the merits of the case.'

Considering the above pronouncements and after cautiously weighing both parties' arguments as well as the evidence presented by the plaintiffs and taking into consideration the facts and the law involved, the Court grants defendants' *Demurrer to Evidence*.

⁵ *Gutib vs. Court of Appeals*, G.R. No. 131209, August 13, 1999.

⁶ *Republic of the Philippines vs. Gimenez, et.al.*, G.R. No. 174673, January 11, 2016.

⁷ *Ibid.*

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The Complaint filed by plaintiffs is essentially a collection case against herein defendants for alleged deficiency LBT in the total amount of Php33,883,713.58 on the ground that the LBT assessment has become final and executory.

Plaintiffs' main allegation is that defendants underdeclared its gross sales/receipts for calendar years 2014 and 2015 with the Iloilo City Government resulting to an LBT deficiency for the years 2015 and 2016. These discrepancies were allegedly discovered when deputy examiner, Helen Alcantara, by virtue of a Letter of Authority No. 7, compared the gross receipts indicated in defendant corporation's AFS submitted to the Securities and Exchange Commission (SEC) with that declared as its gross sales/receipts with the Iloilo City Government.

It is further alleged by plaintiffs that a Letter dated November 8, 2016 was sent by the Office of the City Treasurer of Iloilo City to defendant corporation requesting its manager/proprietor to appear before the City Treasurer to shed light on the aforesaid findings. A New Order of Payment was allegedly attached to this letter containing the deficient tax due plus penalties for the period covering the first to fourth quarters of 2016.

A series of communication between the City Treasurer's Office and defendant corporation ensued until a Final Demand for Payment dated August 3, 2017 was allegedly sent to defendant corporation through its President, Mr. Juan Manuel Lopez, demanding payment of its LBT deficiency for calendar year 2016, within three (3) working days from receipt. Another Final Demand for Payment dated February 13, 2018 was alleged to have been sent via registered mail to defendant corporation.

The main contention of plaintiffs is that defendant corporation failed and refused to pay the alleged LBT deficiency despite several demands made by the Iloilo City Government.

Records, however, show that vital documents demanding payment of deficiency LBT including the Letter of Authority and Final Demand for Payment were all denied admission in the Court's Resolution dated March 24, 2023 for failure to submit the originals for comparison. Among those denied admission by the Court are the following, thus:

Exhibit	Description
P-5	Letter of Authority No. 7
P-10	City Treasurer's Office' Letter dated 08 November 2016
P-11	New Order of Payment dated November 8, 2016
P-12	Summons dated 13 March 2017
P-14	Final Demand issued on August 3, 2017
P-16	Mr. Jinny Hermano's Letter dated September 11, 2017
P-22	Demand dated January 8, 2018
P-23	Second Demand dated January 25, 2018
P-24	Final Demand dated February 13, 2018

It bears stressing that plaintiffs filed a Motion for Leave to Tender Excluded Evidence in response to the Court's Resolution dated March 24, 2023 instead of a Motion for Reconsideration. This was made clear in the answer made by plaintiffs' counsel upon clarification by Presiding Justice Roman G. Del Rosario, during the hearing held on April 12, 2023, and we quote:

Justice Del Rosario:

"All right. You made mention of Leave of Court. You see, in criminal cases, there is such a thing as Leave of Court with respect to Demurrer of Evidence, but when we talk of Tender of Excluded Evidence, there is actually evidence that was excluded by the Court, meaning, **it may not form part of the record**. So, the essence of a Tender of Excluded Evidence is for the party-litigant to be allowed to include in the docket the excluded evidence. Let us clarify this. Would you agree with the Court that you have not filed a Motion for Reconsideration from the Resolution of the Court dated March 24, 2023 with respect to the Formal Offer of Evidence?

Atty. Cuñada:

Yes, your Honors, **we have not filed a Motion for Reconsideration, instead we opted to file a Tender of Excluded Evidence.**" *(Emphases supplied)*

Be it noted that the Court Resolution dated June 21, 2023 granting plaintiffs' Motion for Leave of Court to Tender Excluded Evidence included a caveat that it is merely taking note of the copies of the excluded documentary evidence, and we quote:

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“However considering that the remedy availed of by plaintiffs is a mere Tender of Excluded Evidence and not a Motion for Reconsideration of the March 24, 2023 Resolution, **the tender of the above-copies of the excluded documentary evidence are simply noted.**” (*Emphasis supplied*)

Citing the decision of the Supreme Court in the case of *Cruz-Arevalo vs. Querubin-Layosa*,⁸ the Court in the Resolution dated September 26, 2024 denying the defendants’ Motion for Reconsideration, stated that “the Tender of Excluded Evidence is a remedy provided by the rules and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.”

The denial of the admission of some of the exhibits of plaintiffs in the Court Resolution dated March 24, 2023, stays as far as appreciation of the evidence in regard to examining the veracity of plaintiffs’ allegations is concerned. We reiterate that a demurrer to evidence is defined as “**an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.**”⁹

Based on the evidence offered and admitted by the Court, we find that the plaintiffs failed to prove their allegations, particularly the several demands made upon the defendants on their alleged LBT deficiencies; the refusal of defendants to pay despite these demands and the amounts that the defendants were required to pay the Iloilo City Government. In sum, plaintiffs failed to support their allegation that defendants are liable to pay the alleged LBT deficiencies for the period involved, hence, there is no legal justification for plaintiffs’ action to collect the same.

WHEREFORE, premises considered, defendants’ *Demurrer to Evidence* is hereby **GRANTED**.

⁸ A.M. No. RTJ-06-2005 [OCA-IPI No. 04-2122-RTJ], July 14, 2006.

⁹ *Heirs of Pedro Pasag, et.al., vs. Spouses Lorenzo and Florentina Parocha, et al.*, G.R. No. 155483, April 27, 2007.

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Accordingly, CTA Case No. OC-028 is **DISMISSED** on the ground of insufficiency of evidence.

SO ORDERED.


CATHERINE T. MANAHAN
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


HENRY S. ANGELES
Associate Justice