

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

REPUBLIC OF THE CIVIL CASE NO. 0010
PHILIPPINES,
Plaintiff,

- versus -

Present:
MUSNGI, J., Chairperson
PAHIMNA, J., Associate Justice
ARCEGA, J.,* Associate Justice

ALFREDO T. ROMUALDEZ,
ET AL.,
Defendants.

DEC 11 2023

Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the *Motion for Reconsideration (of the Resolution dated September 19, 2023)* filed by the plaintiff Republic of the Philippines on 13 October 2023.

The plaintiff argues that not all of its evidence are photocopies. It claims that the following exhibits are originals:

Exhibit	Description
I	Letter dated 31 May 1978 from Angela O. Carlotta, Romson Realty, Inc., to BASECO Corporate Secretary
L	Letter dated 17 May 1983 from Vernan O. Astilla to Alfredo Romualdez
L-1	Inventory of BASECO titles and contracts with NASSCO, EPZA, and GSIS
GG	Technical Descriptions of real properties covered by Exhibit “FF”
HH	Certification dated 27 April 1987 by the Batangas Provincial Assessor
UU	Letter from Atty. Benito Cuesta I to Atty. Ildefonso S. Abancio dated 20 July 1976

* Sitting as Special Member per Administrative Order No. 328-2017 dated 26 September 2017.

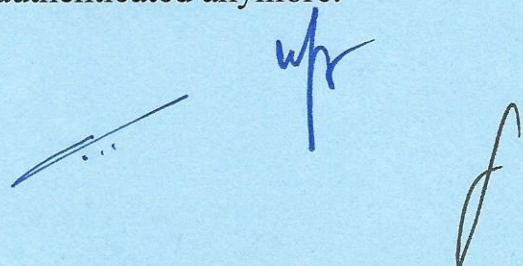
x-----x

VV	Deed of Transfer
WW	Deed of Transfer of Smelters Corporation dated 29 July 1976
ZZ	Memo dated 22 July 1976 from Benito Cuesta to Alfredo Romualdez
BBB	Acknowledgment signed by Vice Consul Eva G. Betita dated 24 September 1992
BBB-1 to BBB-25	Affidavit of Anthony P. Lee dated 24 September 1992
EEEE	Blank Notice of Waiver signed by Anthony P. Lee
NNNN	Memorandum dated 02 May 1986 signed by Jose M. Valde, Ricardo D. Cardema, and Generoso Obusan, Jr.
TTTT	Memorandum Report dated 05 June 1986 executed by the following: Jose M. Valde, Ernesto R. Baria, and Carlos Saumar
VVVV	List of Stock Certificates Issued to BASECO stockholders
WWW to WWW-150	BASECO Stock Certificates issued to various stockholders

The plaintiff states that the originals of the exhibits were shown to the defendants who stipulated that the exhibits are faithful reproduction of the same. Plaintiff's witnesses Maria Lourdes O. Magno and Antonio Rolando Z. Eduarte also stated in their Judicial Affidavits that the exhibits bore the notation "Certified True Copy from Original," which meant that the documents are photocopies and faithful reproductions of the original documents in their custody and possession.

Moreover, the plaintiff seeks the application of Section 3(a) and Section 5 of Rule 130 of the Revised Rules on Evidence to allow the admission of photocopies of documentary exhibits when the same are lost or destroyed.

The plaintiff also manifests that witness Magno also stated that only photocopies of the documents were turned over to her by former Records Custodians of PCGG and that she does not have the originals of certain exhibits. However, due to the age of the documents, the plaintiff states that the documents need not even be authenticated pursuant to Section 22 of Rule 130 of the Revised Rules on Evidence. Considering that most of the documentary exhibits are more than thirty (30) years old and are unblemished by any alterations, these need not be authenticated anymore.

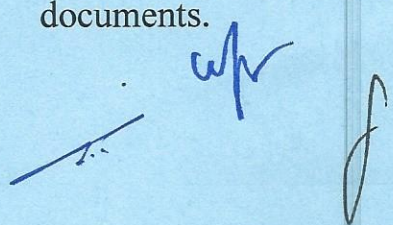


x-----x

In their *Opposition*, defendants Basilio C. Yap, Benjamin C. Yap III, and Enrique Y. Yap, Jr., who are the Joint Administrators of the estate of defendant Emilio T. Yap, state that the plaintiff only presented the original documents of the following exhibits:

Exhibit	Description
I	Letter dated 31 May 1978 from Angela O. Carlotta, Romson Realty, Inc., to BASECO Corporate Secretary
L	Letter dated 17 May 1983 from Vernan O. Astilla to Alfredo Romualdez
L-1	Inventory of BASECO titles and contracts with NASSCO, EPZA, and GSIS
GG	Technical Descriptions of real properties covered by Exhibit "FF"
HH	Certification dated 27 April 1987 by the Batangas Provincial Assessor
UU	Letter from Atty. Benito Cuesta I to Atty. Ildefonso S. Abancio dated 20 July 1976
WW	Deed of Transfer of Smelters Corporation dated 29 July 1976
ZZ	Memo dated 22 July 1976 from Benito Cuesta to Alfredo Romualdez
BBB	Acknowledgment signed by Vice Consul Eva G. Betita dated 24 September 1992
BBB-1 to BBB-25	Affidavit of Anthony P. Lee dated 24 September 1992
EEEE	Blank Notice of Waiver signed by Anthony P. Lee
NNNN	Memorandum dated 02 May 1986 signed by Jose M. Valde, Ricardo D. Cardema, and Generoso Obusan, Jr.
TTTT	Memorandum Report dated 05 June 1986 executed by the following: Jose M. Valde, Ernesto R. Baria, and Carlos Saumar

Defendants claim that all the other exhibits are photocopies and that the plaintiff failed to lay the basis for the admission of the same as secondary evidence. They argue that the plaintiff merely relied on the testimony of witness Magno that the documents have naturally gone missing over time instead of proving the requirements under Section 5 of Rule 130 of the Rules of Evidence. The defendants claim that the testimony of witness Magno did not prove the following: (1) the loss or destruction of the originals of these documents; (2) the unavailability of the originals was without bad faith on plaintiff's part; or (3) that plaintiff conducted a diligent search of the documents.



x-----x

Defendants aver that the plaintiff also failed to present any witness to authenticate the private documents under Section 20 of Rule 132 of the Revised Rules on Evidence. They also argue that witnesses Magno and Eduarte have no personal knowledge of the preparation, execution, and issuance of the documents.

Lastly, defendants argue that it is not sufficient that the documents are more than thirty (30) years old because they must comply with the following requirements: (1) that the documents are produced from a custody which it would naturally be found if genuine; and (2) they are unblemished by any alteration or circumstances of suspicion. In this case, defendants maintain that the subject documents cannot be considered as "ancient documents" under Section 21 of Rule 130 of the Rules of Court because (1) plaintiff's documentary evidence are mere photocopies, except for the abovementioned original documents; and (2) witnesses Magno and Eduarte are not the proper custodians of the original documents.

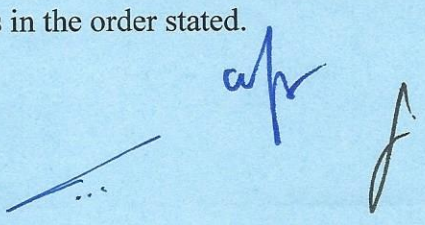
In its *Comment and Opposition*, defendants heirs of Geronimo Z. Velasco also argue that (1) the plaintiff failed to present the purported originals to defendants heirs so that they could be compared with the marked exhibits; (2) the supposed original documents were not properly authenticated; (3) the plaintiff failed to establish the requirements for presentation of secondary evidence; and (4) that the Ancient Document Rule does not apply.

RULING

After a circumspect review of the records, the Court resolves to admit plaintiff's Exhibits "I", "L", "L-1", "GG", "HH", "UU", "VV", "WW", "ZZ", "BBB", "BBB-1" to "BBB-25", "EEEE", "NNNN", and "TTTT," inclusive of all sub-markings considering that they were marked as certified true copies of the original documents during the preliminary conferences.

All other exhibits are not admitted for failure of the plaintiff to comply with the requirements under Section 5, Rule 130 of the Rules of Court which provides that:

Section 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.



x-----x

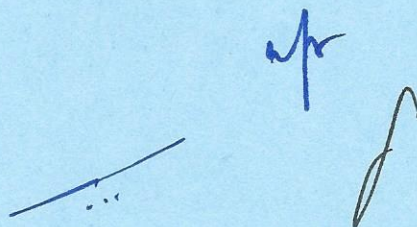
Accordingly, the offeror of the secondary evidence has to prove the following: “(1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence.”¹ In this case, the execution or existence of the original documents and the supposed loss were not sufficiently proven by the plaintiff. The Supreme Court also ruled in *MCC Industrial Sales Corporation v. Ssangyong Corporation* that “where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.”²

The plaintiff also claims that the exhibits are considered “ancient documents” which need not be authenticated pursuant to Section 22 of Rule 130 of the Rules of Court. The rule states that:

Sec. 22. *Evidence of execution not necessary.*— Where a private writing is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its execution and authenticity need be given

However, the exhibits presented by the plaintiffs were mere photocopies as shown by its marking “certified photocopy from a photocopy.” In the case of *Heirs of Nuñez, Sr. v. Heirs of Villanoza*,³ the Supreme Court held that a mere photocopy of an alleged ancient document is not sufficient, to wit:

A copy purporting to be an ancient document may be admitted in evidence if it bears a certification from the proper government office where the document is naturally found genuine that the document is the exact copy of the original on file. Here, the photocopied Affidavit of Teofila does not carry such certification from the notary public or the Register of Notaries Public, among others. Petitioners have not shown that the Affidavit of Teofila is free from suspicion and unblemished by alterations.



¹ *Dantis v. Maghinang, Jr.*, G.R. No. 191696, 10 April 2013, citing *Santos v. Court of Appeals*, 420 Phil. 110, 120 (2001).

² G.R. No. 170633, 17 October 2007.

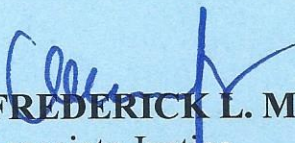
³ G.R. No. 218666, 26 April 2017.

x-----x

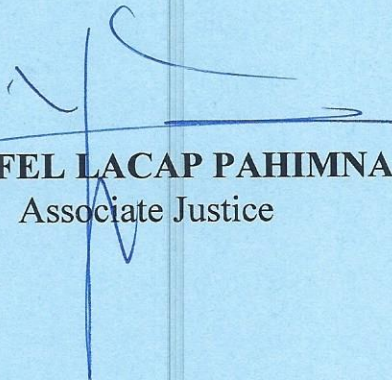
WHEREFORE, in view of the foregoing, the subject *Motion for Reconsideration* is **PARTIALLY GRANTED**. The Court **ADMITS** plaintiff's Exhibits "**I**", "**L**", "**L-1**", "**GG**", "**HH**", "**UU**", "**VV**", "**WW**", "**ZZ**", "**BBB**", "**BBB-1**" to "**BBB-25**", "**EEEE**", "**NNNN**", and "**TTTT**," inclusive of all sub-markings. All other exhibits are not admitted for failure of the plaintiff to establish the requirements under Section 5, Rule 130 of the Rules of Court.

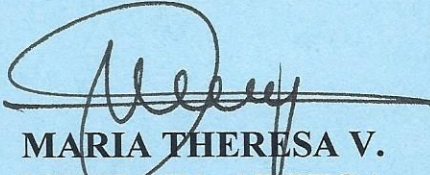
SO ORDERED.

Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI
Associate Justice
Chairperson

We Concur:


LORIFEL LACAP PAHIMNA
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice