

**NGO SENG, ET AL., PETITIONERS, VS. RAFAEL FERNANDEZ, ET AL.,
RESPONDENTS.***G.R. No. L-7086. January 20, 1956*

Ponente: LABRADOR, J.

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This case was brought to this Court upon a writ of certiorari against a judgment of the Court of Appeals. . In the judgment Paz Fernandez and Guadalupe Darjuan, defendants, are absolved from the claims of Ngo Seng and Go Pin, plaintiffs, and of Norberto Quisumbing, intervenor, and the latter is sentenced to pay Ngo Seng and Go Pin P15,867.50 and Paz Fernandez, P5,069.15. The facts found by the Court of Appeals necessary to an understanding of the issues involved in this case are as follows:

Paz Fernandez and Guadalupe Darjuan were proprietors and operators in the year 1947 of a carpentry shop for the construction of bus bodies. As they needed funds with which to buy materials and to pay wages of the laborers, Rafael Fernandez, friend of Paz Fernandez, secured the help of his friend, Norberto Quisumbing. Quisumbing in turn sought the help of his own friends Ngo Seng and . Go Pin. Both Quisumbing at first, and Ngo Seng and Go Pin later, furnished funds to Paz Fernandez. Mortgages were executed to cover the sums taken first from Quisumbing and later from Ngo Seng and Go Pin. Quisumbing , was also authorized by a power of attorney executed by the proprietors of the shop to purchase the materials and pay the laborers and to collect the accounts due said proprietors. As Paz Fernandez, and Darjuan failed to pay the mortgage indebtedness to Ngo Seng and Go Pin, the latter brought the action to recover the mortgage debt of P28,600 and Quisumbing intervened, demanding accounting of the sums received by Fernandez and Darjuan in payment of busses constructed and his share in the profits. Fernandez and Darjuan alleged that the sum actually borrowed from Ngo Seng and Go Pin was f20,000, and that this was not received by them but by Quiaumbing, and by way of counterclaim demanded the payment of P10,000 as losses and damages and P33,634.19 as overpayment and usurious interest.paid in the mortgage loans.

The relationship between the parties is divided into three periods. During the first period, Quisumbing spent P20,700 and collected P9,245.80, so there remained a balance of P11,454.20 Jn his favor. 'During the second period and according to the receipts, Quisumbing received on account of the mortgage from Ngo Seng and Go Pin only P20,000 and kept for himself P8,600. But the sums appearing in the receipts included an interest of 45 per cent, so that the actual sum received by Quisumbing and invested by him in the business was only P15,867.50. During the second period, P20,240 was collected by Quisumbing, according to him, so the losses for the two periods would be P7.O81.Y0, thus:

First period (Loss)..... P11,454.20

Second period (Expenses) 15,867.50

Total P27.321.70

Less: Collection P20.240.00

Loss P7,081.00

The above losses would be true if all the statements of account were given credit. But of the statements, three are not signed and do not bear the conformity of Paz Fernandez. These are statements K, L and M. These statements contain the following amounts as supposed expenses:

Exhibit K P7,493.56

Exhibit L 3,668.71

Exhibit M 2,562.73

Total P13,724.99

As said statements were not signed by Paz Fernandez and no evidence was introduced to prove these expenses, the same could not be charged by Quisumbing against the business.

The sums actually collected by Quisumbing for the account of the business amounted to P37.460, not P20.240, as claimed by him. If from this amount the losses during the first period, amounting to P11,454.20 and the sums received from Ngo Seng and Go Pin during the second period, amounting to P15.867.50, or a total of P27.321.30, are to be deducted (from the above collections of P37.460), the profit would be P10,138.30.

Quisumbing should, therefore, pay to Ngo Seng and Go Pin the sum of P15.887.50, with interest at the rate of 12 per cent from the filing of the complaint, and pay to Paz Fernandez, P5.069.15, representing one-half of the profit of P10.138.30, with interest from the filing of the counterclaim against Quisumbing on March 29, 1948. The above is the judgment of the Court of Appeals against which an appeal has been brought by way of certiorari.

The most important issue raised in the appeal is the failure of the respondent Court of Appeals to take into account the report of a certified public accountant, Exhibit O, in which it appears that the balance of collections for which Quisumbing is responsible is P63.69, thus:

"STATEMENT OF ACCOUNT

"Collections on finished jobs

P44.400.00

Advances from M.U.B

7,500.00

Total collections

P51.900.00

"Deduct:

Materials used

P16.317.70

.....

Wages paid laborers

17,863.61

34,171.31

Net collections

P17,728.69

"Deduct:

Money received by Mrs. Paa Fernandez

P20,215.00

Less amount received by Mr. Quisumbing

2,550.00

17,665.00

Balance of collections

P63.69"

Petitioners—first contend that as the said report Exhibit O was not objected to by the respondent Paz Fernandez, the same should be admitted even though the referee did not attach the exhibits supporting said report. In answer the respondents argue that the question now raised in this Court was not brought to the Court of Appeals for consideration ; that a court has the right to reject the report of a commissioner if the same is at variance with the substantial preponderance of evidence, even if no objections have been filed thereto; and that the commissioner who submitted the report was asked to make a report on those facts found by him in certain documents in the custody of the Anti-Usury Board and did not hear witnesses thereon. We find these arguments of the respondents valid and supported by the facts and the circumstances.

The commissioner who submitted the. statement of accounts, Exhibit O, was not designated for the "purpose of trying or considering an issue in a case within the meaning of section 1 of Eule 34 of the Rules, of Court. He was not asked to find how much was owed by one party to the other. He was not entrusted with the determination of an issue. AH that he was asked to do was "to examine all the records relevant to this case, now in the custody of the Anti-Usury Board" (p. 80 of the Record on Appeal). The report of the said accountant, therefore, was not the report contemplated within Rule 34.

In the second place, we presume that the papers examined were statements prepared by Quisumbing himself, which must have been seized by the Anti-Usury Board, or submitted by him to the latter in the course of the investigation as to the legality of his transactions. The authenticity and correctness of said documents were never before the court. The same were not presented to support the report and no opportunity was afforded the adverse party to question them. Admitting for the sake of argument that the documents were in the handwriting of Quisumbing, the same are incompetent against Paz Fernandez and Darjuan, because books of account, as regards other persons, are hearsay or *res inter alios acta*, except when circumstances are shown to justify their admission as an exception to the above rule (*Aldecoa & Co. vs. Warner, Barnes & Co.*, 30 Phil- 153). No reason of necessity or circumstantial guarantee of trustworthiness was adduced; Quisumbing was living, indeed he actually testified. Neither were the documents shown to have been kept in the performance of a duty required by law (section 35, Rule 123, Rules of Court).

"A mere *ex parte* memorandum of a transaction or occurrence, even though made at the time of such a transaction or occurrence, is not, ordinarily admissible as evidence thereof against a third person, unless prepared in the discharge of some public duty or some duty arising out of the business relations of the person making it with others, or in the regular course of his own business, or with knowledge and concurrence of the party to be charged and for the purpose of charging him * * *" (20 Am. Jur. section 942, p. 796.).

The allegations of Quisumbing are sought to be proved . by original statements of accounts which he submitted in court at the time of the trial, marked Exhibits D to N. The findings of the Court of Appeals are based on these very statements. If Quisumbing had wanted to, rely upon the papers in the possession of the Anti-Usury Board, he could have secured certified or photostatic copies thereof for presentation at the time of the trial. Evidently, he did not rely on these papers or statements of accounts. That he did not rely on them is confirmed by the fact that no mention about them is made in the decision of the Court of Appeals. The counsel for the respondents alleged without contradiction that the question of the value of Exhibit O was never brought before the consideration of the Court of Appeals.

Lastly, the conduct of petitioner Quisumbing himself in relying upon original statements signed by the adverse party, upon which statements he had testified, and the further fact that he did not testify on the statements or papers subject of the report Exhibit O shows that these papers must have been considered by him of " inferior value as evidence. Besides the said report (Exhibit O) does not dovetail with the other documentary evidence that he had presented. All these circumstances show that Quisumbing never pretended that said report was relied upon by him as basis of his claims. He now relies upon the report evidently as an excuse for coming to this Court. For all the above reasons, we find no cause for reversing the decision of the respondent tribunal in relying mainly for its decision on the other documentary evidence submitted by the appellants themselves.

The fourth assignment of error seeks to strike out and correct a statement contained in the decision that 45 per cent was charged by Quisumbing during a short period of 40 days in addition to 12 per cent agreed upon in the mortgage. It is claimed that this is unnecessary? We believe otherwise. The statement is a conclusion of fact made by the Court of Appeals, upon which the decision is based. It is very material to the decision, and thia Court is not authorized, and no one for that matter is, to order its suppression.

The fifth assignment of error refers to an alleged mistake in arithmetic, in the computation. The above error should have been submitted to the Court of Appeals for its correction. This Court, being an appellate tribunal, reviews only errors or issues actually brought before the respondent court, and it appearing that the supposed error is insignificant the same is hereby overruled.

Wherefore, in view of the foregoing considerations, the judgment appealed from is hereby affirmed in toto, with

costs against the petitioners.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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