

DRAGON FORT CORPORATION (525 C.M. RECTO HIGHWAY, CLARK SPECIAL ECONOMIC ZONE (CSEZ), CLARKFIELD, ANGELES CITY, 2009), PLAINTIFF-APPELLANT, VS. J.V. BUAN CONSTRUCTION, REPRESANTE...

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Impugned on appeal[1] before Us was the Regional Trial Court's Decision[2] dated July 1, 2010 which dismissed plaintiff-appellant's Complaint with a major relief for Specific Performance against defendants-appellees J.V. Buan Construction and Clark Development Corporation.[3]

Per the initiatory pleading, it was asserted by the plaintiff that it entered into a Lease Agreement[4] with Clark Development Corporation for the purpose of operating a duty free store and other related commercial activities within a piece of lot within the Clark Special Economic Zone (CSEZ) and a building denominated as Facility No. 5275. Under the Contract of Lease, the minimum rental for the first two (2) years amounted to P326,000.00 per month to commence six months from signing of the Contract of Lease or starting January, 1997. From January 1997, plaintiff allegedly started paying monthly rentals at the rate of P326,000.00.

It was likewise represented by the plaintiff that it entered into a Construction Contract[5] for defendant Buan to construct and/or reconstruct the plaintiff's building to house its Duty Free store. Pursuant to the arrangement, the plaintiff allegedly paid the required 15% advance payment which amounted to P9,350,000.00.

According to the plaintiff, defendant Buan failed to complete the building within the agreed construction period of 150 days, and it was remiss in the payment of the supervising architect's fee.

As a result of these perceived breaches, plaintiff's opening of the duty free store was delayed, nay, impeded which resulted to huge losses. When defendant Buan supposedly did not heed the plaintiff's demand for completion and turn-over, an attempt was made by the plaintiff to secure from defendant CDC a Temporary Permit to Operate to minimize its losses. To plaintiff's dismay, it was also not heeded and the plaintiff was consequently constrained to suspend payment of its monthly rent of P326,000.00.

By way of Answer with Compulsory Counterclaims,[6] defendant Buan denied plaintiff's claims and alleged fulfillment of the Construction Contract. It interposed the idea of plaintiff's transgression in the correlative obligation to pay the outstanding contract price of P19,868,388.00.

On the other hand, co-defendant Clark Development Corporation alleged on its Answer with Special And Affirmative Defenses[7] that the plaintiff's Complaint was bereft of a cause of action because the processing of a request for a Certificate of Occupancy can hardly prosper sans documentation therefor from the plaintiff.

After termination of pre-trial[8] and trial, the Decision of July 1, 2010 materialized contrary to the plaintiff's anticipated result.[9]

Hence, an appeal was interposed by plaintiff-appellant premised on the following ascriptions as prelude to assailing the disposition below:[10]

I.

... IN DISMISSING THE COMPLAINT FILED BY THE PLAINTIFF AGAINST THE DEFENDANTS

II.

... IN NOT AWARDING DAMAGES TO THE PLAINTIFF BY WAY OF UNREALIZED INCOME SINCE IT COULD NOT OPERATE ITS DUTY FREE STORE ON ACCOUNT OF THE FAILURE OF DEFENDANT J.V. BUAN CONSTRUCTION TO COMPLETE THE BUILDING WITHIN THE PERIOD ALLOWED BY THE CONSTRUCTION AGREEMENT

III.

... IN NOT AWARDING DAMAGES TO THE PLAINTIFF BY WAY OF PENALTIES AGAINST DEFENDANT J.V. BUAN CONSTRUCTION FOR THE LATTER'S FAILURE TO COMPLETE THE SAID BUILDING IN ACCORDANCE WITH THE CONSTRUCTION AGREEMENT

IV.

... IN NOT AWARDING THE DAMAGES AS PRAYED FOR BY THE PLAINTIFF

Simply put, the core issue revolved on the propriety of the dismissal of the Complaint and counterclaims, inclusive of the aspect on damages.

When assayed by what is expected of an appellant by adjective norms, a scan of the Rollo disclosed that the Brief from plaintiff-appellant ignored page references to the record in the Statement of the Case,[11] Statement of the Facts[12] and Arguments[13] as opposed to the mandate in paragraphs (c), (d) and (f), Section 13, Rule 44 of the 1997 Rules of Civil Procedure:

Section 13. Contents of appellant's brief – The appellant's brief shall contain, on the order herein indicate, the following:

(a) Xxx;

(b) Xxx;

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

(e) Xxx;

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

Xxx."(underscoring Ours)

Section 1, Rule 50 of the 1997 Rules of Civil Procedure explicitly provides that:

"Section 1. Grounds for dismissal of appeal – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Xxxx;

xxxx

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

xxxx.”

To repeat jurisprudential caveat:

“Where appellants' brief failed to make page references to the record to support their factual allegations and also failed to make a separate statement of facts, in violation of Sec. 16 (d), Rule 46 (now Sec. 13 (d), Rule 44), the appeal may be properly dismissed.”[14]

Indeed:

“It is the duty of counsel to designate in their briefs by reference to the pages of the record, the evidence upon which they rely to refute or support the findings of the trial court; and when they fail to do so it is not incumbent upon the appellate court, in civil cases, to review the evidence for the purpose of verifying the correctness of the findings.”[15]

“Page references to the record are not an empty requirement. Facts which are admitted require no further proof whereas facts in dispute must be backed by evidence; hence, the requirement that one's statement of facts should be supported by page references to the record. If a statement of fact is unaccompanied by a page reference to the record, it may be presumed to be without support in the record and may be stricken or disregarded altogether. Disobedience to this requirement has been punished by the dismissal of the appeal.”[16]

“Lawyers for appellants, when they prepare briefs, would do well to read and re-read Section 16 of Rule 46. If they comply strictly with the formal requirements prescribed in Section 16, they might make a competent and luminous presentation of their clients' cases and lighten the burden of the Court.”[17]

What Justice Fisher said in 1918 is still true up to now: “The pressure of work upon this Court is so great that we cannot in justice to other litigants undertake to make an examination of the voluminous transcript of the testimony (1,553 pages in this case, twenty-one witnesses having testified), unless the attorneys who desire us to make such examination have themselves taken the trouble to read the record and brief in accordance with our rules. As noted in an old case, this Court decides hundreds of exceptionally considerable number of petitions, motions and interlocutory matters.”[18]

To reiterate, the dismissal of an appeal for failure to include a statement of facts with page references to the record and assignment of errors is warranted under Section 13, Rule 44 in conjunction with Rule 50 (Sec. 1 [g]) of 1997 Rules of Civil Procedure.[19]

Verily, when We examined the paper presented to Us on appeal, particularly the Statement of the Case, the Statement of Facts, the Evidence for the Plaintiff and the Arguments, We cannot ignore that such presentation leaves much to be desired when juxtaposed[20] with what should properly appear on an Appellant's Brief. Surely, a sift through the portion about the Evidence of the Plaintiff merely disclosed an enumeration of two testimonial sponsors and the list of documents for the plaintiff from Exhibits A to O with the corresponding brief description.[21]

Of course, We are mindful of the doctrine of substantial compliance in the interpretation of the Rules of Court,[22] but to promptly yield to such concept in remedial law will collide with equally acknowledged precept in case law that:

“Rules 44 and 50 of the 1997 Rules of Civil Procedure are designed for the proper and prompt disposition of cases before the Court of Appeals. Rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.”[23]

Hence, inasmuch as appellant was remiss about its primordial role as the proponent on appeal for possible reversal of the Decision below, We have no recourse but to uphold the conclusion from the trial court in keeping with evidentiary precept of regularity in the performance of official duty enjoyed by every magistrate.[24] WHEREFORE, the APPEAL is hereby DISMISSED and the DECISION of the Regional Trial Court dated July 1, 2010 is hereby AFFIRMED.

SO ORDERED.

Reyes, Jr., J. C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015, effective February 2, 2015.

[1] Dated August 17, 2010, Volume IV, Record, pp. 1229-1230.

[2] Decision dated July 1, 2010, Volume IV, Record, pp. 1201-1225.

[3] Complaint dated March 3, 1998, Volume I, Record, pp. 1-10.

[4] Lease Agreement Exhibit “B”, Volume I, Record, pp. 232-249.

[5] Construction Contract, Exhibit “C”, Volume I, Record, pp. 251-263.

[6] See Answer with Compulsory Counterclaims dated April 1, 1998, Volume I, Record, pp. 84-90.

[7] See Answer with Special and Affirmative Defenses dated April 29, 1998, Volume I, Record, pp. 125-131.

[8] See Order dated May 29, 2003, Volume III, Record, page 1002.

[9] See Decision dated July 1, 2010, Volume IV, Record, pp. 1201-1225.

[10] Brief for Plaintiff-Appellant Dragon Fort Corporation dated September 18, 2011, Rollo, pp. 36-37.

[11] Brief for Plaintiff-Appellant, Rollo, pp. 28-32.

[12] Brief for Plaintiff-Appellant, Rollo, pp. 33-36.

[13] Brief for Plaintiff-Appellant, Rollo, pp. 37-40.

[14] 1 Regalado, Remedial Law Compendium, 10[th] edition, 2010, page 645, citing *Genobiagan vs. Court of Appeals*, et al., L-44323, March 2, 1977, *Heirs of Abelardo vs. Palomique*, et al., L-39288-89, January 31, 1985.

[15] 2 *Feria and Noche*, Civil Procedure Annotated, 2013, page 362, citing *Palarca vs. Baguisi*, 38 Phil. 177 (1918).

[16] 2 *Feria and Noche*, Vide, pp. 362-363, citing *Mendoza vs. United Coconut Planters Bank*, G.R. No. 165575, February 2, 2011, citing *De Liano vs. Court of Appeals*, G.R. No. 142316, November 22, 2001.

[17] 2 *Herrera*, Remedial Law, 2007, page 721, citing Section 12 of Rule 43.

[18] 2 *Herrera*, Vide, page 721, citing *Alzua and Arnault vs. Johnson*, 21 Phil. 308,395, In Re: *Almacen*, 31 SCRA 562,573, G.R. No. L-27654, February 18, 1970, *Salas vs. Salao*, 70 SCRA 77, G.R. No. L-26699, March

16, 1976.

[19] 2 Herrera, Vide, pp. 721-722, citing Bucad vs. Court of Appeals, 216 SCRA 423, G.R. No. 93783, December 11, 1992.

[20] Rollo, pp. 28-40.

[21] Rollo, pp. 29-36.

[22] Section 6, Rule 1, 1997 Rules of Civil Procedure.

[23] Mendoza et al. vs. UCPB, Inc., G.R. No. 165575, February 2, 2011, citations omitted.

[24] Section 3 (m) (n), Rule 131,; Peralta, Jr., Perspectives of Evidence, 2005 edition, pp. 375-376; cf. Lamm J. in Mackowik vs. Kansas City, St. Josephs & Council Bluffs Railroad Co., 196 Mo 550, 5571, 94 S.W. 256, 262 (1906), quoted in 9 Wigmore, Evidence, Sec. 249 McCormick page 582 as cited in 6 Herrera, Remedial Law, 1999 Edition, page 36.

The “Bursting Bubble Theory” or the “Thayerian Rule” presumptions shift the burden of producing evidence with regard to the presumed fact. Presumptions are “like bats of the law flitting in the twilight, but disappearing in the sunshine of actual facts.”

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