

**GUIDO S. CUERDA AND ENGR. ASHLEY ALVERO,
PLAINTIFFS-APPELLEES, VS. SECURITY BANK CORPORATION,
ARSANT ENGINEERING AND ARCH. NAZARIO SANTOS, DEFENDANTS,**

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated February 28, 2013 of the Regional Trial Court of Makati City, Branch 138, in Civil Case No. 08-260, the dispositive portion of which reads:

WHEREFORE, the Court awards the plaintiffs against defendant Security Bank Corp. actual damages in the amount of TWO MILLION FIVE HUNDRED SEVENTY THREE THOUSAND SIX HUNDRED FIFTY EIGHT AND SIXTY-FIVE CENTAVOS (P2,573,658.65) to be divided equally between plaintiff Cuerda on one side and defendant Santos and Arsant Engineering on the other side in accordance with their Memorandum of Agreement.

Defendant Security Bank Corp. is further ordered to pay attorney's fees of ONE HUNDRED THOUSAND PESOS (P100,000.00) and THREE THOUSAND PESOS (P3,000.00) per court appearance in favor of the plaintiffs.

SO ORDERED.

The facts of the case follow.

In December 2006, defendant Arsant Engineering, through its General Manager, defendant Architect Nazario Santos (hereinafter “Santos”), entered into several contracts with defendant-appellant Security Bank Corporation (hereinafter “SBC”) for the construction of SBC's branches in (a) Panabo City, Davao del Norte, (b) Iligan City, (c) General Santos City, (d) Cagayan de Oro City, and (e) Valle Verde, Pasig City. Santos approached plaintiffs-appellees Guido S. Cuerda and Engr. Ashley Alvero (hereinafter Cuerda & Alvero) for the necessary capital in undertaking the projects. Cuerda & Alvero agreed and went on to perform all the construction and other related works ranging from submission of business proposals to SBC, price negotiations as well as price confirmations, acknowledgment and confirmation of Notice of Awards and Notice to Proceed, project mobilizations, construction operations, inclusive of the supply of manpower, materials, supervision and equipment, technical or engineering works and performance guarantee. In effect, Cuerda & Alvero assumed full responsibility for the projects; Santos' role was only to sign the contracts with SBC. Pursuant to their agreement, payments for the contract price and the progress billings were to be deposited or credited by SBC to the bank account of Arsant Engineering maintained with SBC. This bank account was accessible jointly by Santos and Cuerda & Alvero.

Sometime in January 2008, Cuerda & Alvero discovered that Santos sought to divert SBC's payments to his own benefit, providing SBC with a different account which was solely accessible by Santos. Because of this, Cuerda & Alvero informed SBC that they were partners of Arsant Engineering and that SBC should pay to them the total amount of P2,573,658.65 which remained unpaid.

SBC was aware that Santos gave a different account number where the payments were to be credited. So, when SBC received the letter of Cuerda & Alvero, it called the attention of Santos and required the latter to provide a copy of Arsant Engineering's Articles of Partnership duly registered with the Securities and Exchange Commission (SEC). Per said Articles of Partnership it appeared that Santos was the manager and the names of Cuerda & Alvero were not indicated therein as partners. Thus, SBC refused to heed the demand of Cuerda & Alvero. It concluded that Cuerda & Alvero were not connected with Arsant Engineering and/or Architect Nazario Santos.

On April 3, 2008, Cuerda & Alvero filed a Complaint[2] for sum of money against SBC, Arsant Engineering and Santos, praying that, after due notice and hearing, judgment be rendered ordering the defendants to pay Cuerda & Alvero:

- a. The sum of P2,573,658.65 representing actual damages;
- b. The amount of P100,000.00 plus P3,000.00 appearance fee in court as attorney's fees.

During the trial, the plaintiffs and Santos entered into a Memorandum of Agreement[3] dated May 31, 2011, amicably settling the various cases between them, including Civil Case No. 08-260, and specifically agreeing (insofar as the present case is concerned) that:

x x x

- With respect to the sum of money case entitled 'Guido S. Cuerda and Engr. Ashley Alvero vs. Security Bank Corporation, Arsant Engineering and Arch. Nazario M. Santos' and docketed as Civil Case No. 08-260, now pending before the Regional Trial Court Branch 138, Makati City, the FIRST PARTY agreed to dismiss the case as against the SECOND PARTY with prejudice and instead opted to proceed in collecting its claim solely against Security Bank Corporation. In consideration thereof, both parties herein agreed to divide equally into two—the fifty percent (50%) will go to the FIRST PARTY and the other fifty percent (50%) to the SECOND PARTY—the subject amount of Two Million Five Hundred Seventy Three Thousand Six Hundred Fifty Eight Pesos and 65/100 (P2,573,658.65) sought to be claimed directly against Security Bank Corporation or whatever amount that maybe adjudged by the court in favor of either the FIRST or SECOND PARTY or both. For this particular purpose, the FIRST PARTY undertakes to file the necessary Motion to Dismiss as against the SECOND PARTY immediately after the execution of this Memorandum of Agreement.

- To expedite the proceedings of the case for sum of money entitled “Guido S. Cuerda and Engr. Ashley Alvero vs. Security Bank Corporation, Arsant Engineering and Arch. Nazario M. Santos” and docketed as Civil Case No. 08-260, now pending before the Regional Trial Court Branch 138, Makati City, both parties herein agreed to join forces in judicially collecting the amount due from Security Bank Corporation at the instance and/or initiative of the FIRST PARTY.

- Regardless of who between the FIRST PARTY and the SECOND PARTY is adjudged to be entitled to the amounts prayed in the case mentioned in paragraphs 4 and 5 of this Memorandum of Agreement, the prevailing party shall hold in trust the amount with respect to the fifty percent (50%) share of the other party with the obligation to deliver immediately the same within five (5) days from receipt thereof. Non-compliance by either party of this provision will entitle the aggrieved party for the issuance of a writ of execution in the same court that rendered the judgment.

In resolving the case, the trial court was faced with the following issues:

1. Whether or not plaintiffs have a cause of action against defendant SBC.
2. Whether or not there existed a partnership between plaintiff Cuerda and defendant Santos.

3. Whether or not defendant SBC is obliged to pay plaintiffs for the sum of Two Million Five Hundred Seventy Three Thousand Six Hundred Fifty Eight and Sixty-Five Centavos (P2,573,658.65).

4. Who is liable to pay attorney's fees.

On February 28, 2013, the court a quo rendered its now assailed Decision which resolved the complaint in favor of Cuerda & Alvero, and ordering SBC to pay P2,573,658.65 as actual damages, and P100,000.00 (plus P3,000.00 for every court appearance) for and as attorney's fees.

Additionally, the court a quo approved the Memorandum of Agreement between Cuerda & Alvero and Santos, and the 50%-50% sharing of the monetary award.

The trial court held that, based on the evidence, a partnership existed between Cuerda & Alvero and Santos, and that, in view of the fact that the partnership performed construction projects for the benefit of SBC, the latter should pay the costs for the construction still outstanding as of February 2008.

After its Motion for Reconsideration was denied in the Order[4] dated May 20, 2013, SBC filed the present appeal, alleging that:

THE TRIAL COURT ERRED IN:

a) FINDING THE EXISTENCE OF A PARTNERSHIP BETWEEN THE PLAINTIFFS-APPELLEES AND ARSANT.

b) HOLDING THAT PLAINTIFFS-APPELLEES HAVE A CAUSE OF ACTION AGAINST SBC.

c) HOLDING SBC LIABLE TO PAY THE PLAINTIFFS-APPELLEES THE AMOUNT OF P2,573,658.65.

d) AWARDING PLAINTIFFS-APPELLEES ATTORNEY'S FEES AMOUNTING TO P100,000.00 AND P3,000.00 PER COURT APPEARANCE.[5]

In their Appellees' Brief, Cuerda & Alvero counter the assignment of errors of SBC, claiming that (a) the trial court did not err in finding the existence of partnership between plaintiffs-appellees and Arsant Engineering, (b) plaintiffs-appellees have a cause of action against SBC on account of the existence of partnership between plaintiffs-appellees and Arsant Engineering/Architect Nazario Santos, (c) SBC must pay P2,573,658.65 prayed for in the complaint and as ordered by the trial court, (d) plaintiffs-appellees are entitled to the payment of attorney's fees.

Thus, the main issue in this appeal is whether or not the court a quo committed reversible error in ordering SBC to pay Cuerda & Alvero P2,573,658.65 as actual damages and P100,000.00 (plus P3,000.00 per court appearance) as attorney's fees.

The appeal is bereft of merit.

SBC insists that Cuerda & Alvero are not partners of Arsant Engineering and/or Architect Nazario Santos, that the Articles of Partnership does not show the names of Cuerda & Alvero as partners, and that the trial court erred in finding a partnership between the said parties.

We do not agree.

A partnership is defined as a contract where two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[6] Two or more persons may also form a partnership for the exercise of a profession.[7] From this definition, the requisites or elements of a partnership are (a) mutual contribution to a common stock, and (b) a joint interest in the profits.[8] In other words, a partnership is formed when persons contract "to devote to a common purpose either money, property, or labor with the intention of dividing the profits between themselves." [9]

We quote, with approval, the court a quo when it held that the essential elements of a partnership are present in the case at bar, to wit:

In the present case, the Court finds the existence of both essential elements in the partnership of plaintiff Cuerda and defendant Santos with regard to the construction projects with defendant SBC. With regard to the first element, plaintiff Cuerda was able to provide convincing proof of his financial contributions concerning the construction projects of Santos with the defendant SBC. Arsant Engineering's Partnership Resolution dated August 9, 2006 (Exhibit 'Q') clearly established that plaintiff Cuerda and defendant Santos jointly opened a bank account for the subject construction projects. In addition, both plaintiff Cuerda and Santos issued several Security Bank checks (Exhibits 'U', 'U-1' to 'U-6') to finance the construction of the defendant SBC's projects.

Additionally, plaintiff Cuerda submitted to defendant SBC Performance Bond No. 42186 and Performance Bond No. 42679 wherein the former signed as the Managing Partner of Arsant Engineering Company. Though defendant SBC contends that defendant Santos admitted only to the fact that plaintiff Cuerda was a supposed 'financial consultant' (TSN; June 14, 2011; pp. 23-24), however, aside from his bare testimony, defendant Santos failed to present any other evidence or proof that plaintiff Cuerda was only acting as such. Nonetheless, assuming arguendo that plaintiff Cuerda was indeed a financial consultant in their business venture with defendant SBC, plaintiff Cuerda cannot be excluded as a partner with the said projects because 'a partner may contribute not only money or property, but also industry.' (Torres vs. Court of Appeals, G.R. No. 134559, December 9, 1999)

Regarding the second element of the existence of the partnership, the Court correspondingly finds in favor of the plaintiff Cuerda. The Court notes that the last phrase of Article 1767 of the Civil Code establish the existence of a partnership by mere 'intention of dividing the profits among themselves.' Here, the Court also finds that the sheer opening of a joint bank account by plaintiff Cuerda and defendant Santos for the subject construction projects with defendant SBC signifies both parties' intention to divide whatever profits among themselves. Furthermore, Article 1769 (4) of the Civil Code explicitly provides that the 'receipt by a person of a share in the profits of a business is prima facie evidence that he is a partner in the business.' (Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 148187; April 16, 2008)[10] (Emphasis supplied)

According to SBC, however, Cuerda & Alvero cannot be deemed partners of Arsant Engineering and/or Architect Nazario Santos because Cuerda & Alvero are not indicated as partners in the Articles of Partnership of Arsant Engineering filed with the Securities and Exchange Commission (SEC); that, being the official instrument evidencing the partnership, it is telling of who should be the real partners in the partnership.

Again, we do not agree.

Registration with the SEC is not required for the validity of a partnership. Neither is registration conclusive of the existence of the partnership or who the real partners are. In Angeles vs. Court of Appeals,[11] the Supreme Court held that:

Mere failure to register the contract of partnership with the SEC does not invalidate a contract that has the essential requisites of a partnership. The purpose of registration of the contract of partnership is to give notice to third parties. Failure to register the contract of partnership does not affect the liability of the partnership and

of the partners to third persons. Neither does such failure to register affect the partnership's juridical personality. A partnership may exist even if the partners do not use the words 'partner' or 'partnership.' (Emphasis supplied)

Thus, even assuming *arguendo* that the Articles of Partnership of Arsant Engineering did not indicate Cuerta & Alvero as partners, this does not negate the fact that, as far as the construction of the various branches of SBC are concerned, Cuerta & Alvero and Arsant Engineering and/or Architect Nazario Santos were partners. The real agreement must prevail despite its non-registration with the SEC. To repeat, registration does not invalidate a contract of partnership nor will it excuse the parties from liabilities as partners between themselves and to third persons.

Besides, as correctly pointed out by the court *a quo*, the compromise agreement between Cuerta & Alvero and Santos has effectively settled the matter of whether or not they are partners. As ruled by the trial court:

All the same, whatever ambiguity in the actual relationship of plaintiff Cuerta and defendant Santos was resolved in the above-noted Memorandum of Agreement between the parties “stating therein that both of them had already amicably settled between themselves all the cases involving their partnership pending between them by dividing into two the proceeds of the receivables from Security Bank”. Hence, the Court will not delve deeper into the issue of plaintiff Cuerta's right to recover upon the subject contracts as a partner of defendant Santos.

Now, in view of the fact that Cuerta & Alvero are partners of Arsant Engineering and/or Architect Nazario Santos, do the former have the right to collect the outstanding obligation from SBC?

We answer in the affirmative.

The property rights of a partner are:

- (a) His rights in specific partnership property;
- (b) His interest in the partnership; and
- (c) His right to participate in the management.[12]

A partner is co-owner with his partners of specific partnership property.[13] Meanwhile, a partner's interest in the partnership is his share of the profits and surplus.[14] Lastly, a partner may, alone or with other partners, and with the consent of the other partners, manage the business of the partnership.[15]

Furthermore, every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.[16]

Thus, with all these rights of a partner—from being a co-owner of the partnership property to being an agent of the partnership in the course of the partnership business—Cuerta & Alvero were within their rights to collect from SBC its outstanding obligation. As partners, not only do they have a cause of action against SBC, they are also real parties in interest for purposes of collecting SBC's debt.

Cause of action, as defined in Section 2, Rule 2 of the Rules of Court, is the act or omission by which a party violates the right of another. Its essential elements are as follows:

1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

2. An obligation on the part of the named defendant to respect or not to violate such right; and
3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[17]

In the case at bar, the first element is present because as partners of Arsant Engineering and/or Architect Nazario Santos, it has a right to the obligation of SBC. In fact, as shown by the evidence, it was Cuerta & Alvero who constructed the branches of SBC as Santos merely signed the contract. Meanwhile, the second element is present because as the principal and beneficiary in the construction contracts, SBC has a legal and contractual duty to pay Arsant Engineering the progress billings. Lastly, SBC breached its obligation and violated the right of Cuerta & Alvero because, despite repeated demands, SBC refused to pay what was due, which, as of February 2008, amounted to P2,573,658.65.

Furthermore, Cuerta & Alvero are real parties in interest. Section 2, Rule 3 of the Rules of Court defines a real party in interest as the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Considering that Cuerta & Alvero are partners of Arsant Engineering and/or Architect Nazario Santos with respect to the construction projects of SBC's selected branches, Cuerta & Alvero are definitely parties who stand to be benefited or injured by the judgment in the suit. That they were not signatories in the contracts with SBC will not defeat their right to prosecute the case. As earlier explained, every partner is an agent of the partnership. So, when Santos closed the contracts with SBC, he did so on behalf of the partnership and his partners Cuerta & Alvero.

Now to the amount of P2,573,658.65 which the court a quo ordered SBC to pay to Cuerta & Alvero, SBC claims that it cannot be held liable as the construction projects were not completed. More specifically, SBC alleges that there was no Certificate of Completion issued by the branch managers and architects-in-charge.

To this, the court a quo held:

During trial, the plaintiffs alleged finishing the construction of the defendant SBC's branches in Davao Panabo (sic), General Santos and Cagayan de Oro but the Iligan and Valle Verde were only partial since the construction was stopped when the problem arose. (TSN dated August 16, 2011; p. 14). Consequently, when defendant SBC's witness was asked about her awareness of the stage of construction at the time of January, February or March 2008, she simply stated that she was 'not aware' and she was not in-charge of inspecting all the branches. Thereafter, defendant SBC's witness declared to the Court that it was the bank's architects who had the responsibility of inspecting such branches. (TSN dated April 20, 2012; p. 19 and 20). Nonetheless, defendant SBC neglected to present neither the aforementioned architects nor any piece of evidence to contradict the claim of the plaintiffs regarding the completion or actual status of the subject construction projects.

Additionally, in order to supposedly claim that Arsant Engineering did not in fact finish the construction projects, defendant SBC alleged that the bank hired third-party contractors to finish the same. However, when asked by the Court about the existence of a purchase order and similar certificate of completion, defendant SBC again failed to present such documents despite such order. (TSN dated April 20, 2012; p. 53 to 57). Hence, the positive and uncontroverted testimonies of plaintiff Cuerta stands alongside the assessment, scrutiny and credence of the Court. It is well-settled in the rules of evidence that positive testimony is stronger than negative testimony. (Mitra vs. Commission on Elections, G.R. No. 191938, October 19, 2010, citing Batiquin v. Court of Appeals, G.R. No. 118231, July 5, 1996, 258 SCRA 334) The testimony which stands uncontroverted is deemed conclusive. (Tan vs. Lim, G.R. No. 128004, September 29, 1998, citing Dela Cruz vs. Asociacion Zanjera Casilian, 83 Phil. 214-215).

We must clarify, however, that the burden of proof rested with Cuerda & Alvero especially so that they alleged that they completed some branches and partially completed others, for which reason they claimed that they ought to be paid P2,573,658.65. This is pursuant to Section 1, Rule 131 of the Rules on Evidence which states that “burden of proof is the duty of the party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.” While the burden of proof does not shift, the defendant is nevertheless tasked to present and marshal evidence to counter the evidence of the plaintiff, failing which the evidence of the plaintiff will prevail. The rule was explained by the Supreme Court in *Lee vs. Court of Appeals*,^[18] thus:

Petitioners placed too much reliance on the rule in evidence that the burden of proof does not shift whereas the burden of going forward with the evidence does pass from party to party. It is true that said rule is not changed by the fact that the party having the burden of proof has introduced evidence which established prima facie his assertion because such evidence does not shift the burden of proof; it merely puts the adversary to the necessity of producing evidence to meet the prima facie case. Where the defendant merely denies, either generally or otherwise, the allegations of the plaintiff's pleadings, the burden of proof continues to rest on the plaintiff throughout the trial and does not shift to the defendant until the plaintiff's evidence has been presented and duly offered. The defendant has then no burden except to produce evidence sufficient to create a state of equipoise between his proof and that of the plaintiff to defeat the latter, whereas the plaintiff has the burden, as in the beginning, of establishing his case by a preponderance of evidence. But where the defendant has failed to present and marshal evidence sufficient to create a state of equipoise between his proof and that of the plaintiff, the prima facie case presented by the plaintiff will prevail. (Emphasis supplied)

In the case at bar, Cuerda & Alvero, as plaintiffs in the trial court, have in fact presented sufficient documentary and testimonial evidence that proved by preponderance of evidence their subject collection case against SBC. Exhibits “J”, “K” and “L” pertain to the construction contracts for SBC's branches in Panabo City, Iligan City and General Santos City. Exhibits “A” and “B” refer to the punch lists prepared by SBC served on the contractors as last minute job or service requests. Exhibits “D”, “F”, “M”, “N” and “T” are the summaries, billings and demand letters sent to SBC to pay the outstanding balance of P2,573,658.65.

Then, there is the testimony of Cuerda and Santos,^[19] who both testified that they entered into construction contracts with SBC and that they were able to complete SBC's branches in Panabo City, General Santos City and Cagayan de Oro City, and that they have partially performed the contracts in Iligan City and Valle Verde, Pasig City.

In contrast to the evidence of the plaintiffs-appellees, SBC merely offered denial; that the contracted branches were not finished. But, as already explained above, citing *Lee vs. Court of Appeals*, said denial cannot prevail over the affirmative evidence presented by the plaintiffs-appellees.

Finally, with respect to the award of attorney's fees, including appearance fees, the Court finds the same justified and the amount reasonable. Cuerda & Alvero are entitled to the award of attorney's fees, pursuant to Article 2208 (2) of the Civil Code, because they were compelled to litigate and to incur expenses to protect their interest. Despite the undeniable evidence that Cuerda & Alvero were partners of Arsant Engineering and/or Architect Nazario Santos, SBC withheld the payment of the obligation. What further aggravated the situation was the fact that SBC had accepted the construction projects and had made use thereof. Surely, without the present suit, SBC would continue to refuse or deny what was lawfully due to Cuerda & Alvero.

WHEREFORE, in view of the foregoing, the instant appeal is DISMISSED and the Decision dated February 28, 2013 of the Regional Trial Court of Makati City, Branch 138, in Civil Case No. 08-260 is AFFIRMED IN TOTO.

SO ORDERED.

Barrios, and Diy, JJ., concur.

[1] Rollo, pp. 16-23.

[2] Record, Vol. I, p. 1.

[3] Record, Vol. I, p. 387.

[4] Record, Vol. II, p. 441.

[5] Appellant's Brief, pp. 5-6; Rollo, pp. 35-36.

[6] Art. 1767, Civil Code.

[7] Ibid.

[8] Sunga-Chan vs. Chua, G.R. No. 143340, August 15, 2001.

[9] Afisco Insurance Corporation vs. Court of Appeals, G.R. No. 112675, January 25, 1999.

[10] Decision, pp. 5-6, Rollo, pp. 20-21.

[11] G.R. No. 142612, July 29, 2005.

[12] Art. 1810, Civil Code.

[13] Art. 1811, Civil Code.

[14] Art. 1812, Civil Code.

[15] Arts. 1801-1803, Civil Code.

[16] Art. 1818, Civil Code.

[17] Swagman Hotels and Travel vs. Court of Appeals, G.R. No. 161135, April 8, 2005.

[18] G.R. Nos. 117913 & 117914, February 1, 2002.

[19] TSN dated June 14, 2011 and August 16, 2011.

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