

**WILLIAM UY, PLAINTIFF-APPELLEE, VS. BARTOLOME PUZON,
SUBSTITUTED BY FRANCO PUZON, DEFENDANT-APPELLANT.***G.R. No. L-19819. October 26, 1977*

Ponente: CONCEPCION JR., J.

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Appeal from the decision of the Court of First Instance of Manila, dissolving the "U.P. Construction Company" and ordering the defendant Bartolome Puzon to pay the plaintiff the amounts of: (1) P115,102.13, with legal interest there-on from the date of the filing of the complaint until fully paid; (2) P200,000.00, as plaintiff's share in the unrealized profits of the "U.P. Construction Company" and (3) P5,000.00, as and for attorney's fees.

It is of record that the defendant Bartolome Puzon had a contract with the Republic of the Philippines for the construction of the Ganyangan-Bato Section of the Pagadian-Zamboanga City Road, province of Zamboanga del Sur[1] and of five (5) bridges in the Malangas-Ganyangan Road.[2] Finding difficulty in accomplishing both projects, Bartolome Puzon sought the financial assistance of the plaintiff, William Uy. As an inducement, Puzon proposed the creation of a partnership between them which would be the sub-contractor of the projects and the profits to be divided equally between them. William Uy inspected the projects in question and, expecting to derive considerable profits therefrom, agreed to the proposition, thus resulting in the formation of the "U. P. Construction Company"[3] which was subsequently engaged as sub-contractor of the construction projects.[4]

The partners agreed that the capital of the partnership would be P100,000.00 of which each partner shall contribute the amount of P50,000.00 in cash.[5] But, as heretofore stated, Puzon was short of cash and he promised to contribute his share in the partnership capital as soon as his application for a loan with the Philippine National Bank in the amount of P150,000.00 shall have been approved. However, before his loan application could be acted upon, he had to clear his collaterals of its encumbrances first. For this purpose, on October 24, 1956, William Uy gave Bartolome Puzon the amount of P10,000.00 as advance contribution of his share in the partnership to be organized between them under the firm name U.P. CONSTRUCTION COMPANY which amount mentioned above will be used by Puzon to pay his obligations with the Philippine National Bank to effect the release of his mortgages with the said Bank.[6] On October 29, 1956, William Uy again gave Puzon the amount of P30,000.00 as his partial contribution to the proposed partnership and which the said Puzon was to use in payment of his obligation to the Rehabilitation Finance Corporation.[7] Puzon promised William Uy that the amount of P150,000.00 would be given to the partnership to be applied thusly: P40,000.00, as reimbursement of the capital contribution of William Uy which the said Uy had advanced to clear the title of Puzon's property; P50,000.00, as Puzon's contribution to the partnership; and the balance of P60,000.00 as Puzon's personal loan to the partnership.[8]

Although the partnership agreement was signed by[9] the parties on January 18, 1957, work on the projects was started by the partnership on October 1, 1956 in view of the insistence of the Bureau of Public Highways to complete the project right away. [10] Since Puzon was busy with his other projects, William Uy was entrusted with the management of the projects and whatever expense the latter might incur, would be considered as part of

his contribution.[11] At the end of December, 1957, William Uy had contributed to the partnership the amount of P115,453.39, including his capital.[12]

The loan of Puzon was approved by the Philippine National Bank in November, 1956 and he gave to William Uy the amount of P60,000.00. Of this amount, P40,000.00 was for the reimbursement of Uy's contribution to the partnership which was used to clear the title to Puzon's property, and the P20,000.00 as Puzon's contribution to the partnership capital.[13]

To guarantee the repayment of the above-mentioned loan, Bartolome Puzon, without the knowledge and consent of William Uy,[14] assigned to the Philippine National Bank all the payments to be received on account of the contracts with the Bureau of Public Highways for the construction of the aforementioned projects.[15] By virtue of said assignment, the Bureau of Public Highways paid the money due on the partial accomplishments on the government projects in question to the Philippine National Bank which, in turn, applied portions of it in payment of Puzon's loan. Of the amount of P1,047,181.07, released by the Bureau of Public Highways in payment of the partial work completed by the partnership on the projects, the amount of P332,539.60 was applied in payment of Puzon's loan and only the amount of P27,820.80 was deposited in the partnership funds,[16] which, for all practical purposes, was also under Puzon's account since Puzon was the custodian of the common funds.

As time passed and the financial demands of the projects increased, William Uy, who supervised the said projects, found difficulty in obtaining the necessary funds with which to pursue the construction projects. William Uy correspondingly called on Bartolome Puzon to comply with his obligations under the terms of their partnership agreement and to place, at least, his capital contribution at the disposal of the partnership. Despite several promises, Puzon, however, failed to do so.[17] Realizing that his verbal demands were to no avail, William Uy consequently wrote Bartolome Puzon formal letters of demand,[18] to which Puzon replied that he is unable to put in additional capital to continue with the projects.[19]

Failing to reach an agreement with William Uy, Bartolome Puzon, as prime contractor of the construction projects, wrote the sub-contractor, U.P. Construction Company, on November 20, 1957, advising the partnership, of which he is also a partner, that unless they presented an immediate solution and capacity to prosecute the work effectively, he would be constrained to consider the sub-contract terminated and, thereafter, to assume all responsibilities in the construction of the projects in accordance with his original contract with the Bureau of Public Highways.[20] On November 27, 1957, Bartolome Puzon again wrote the U.P. Construction Company finally terminating their sub-contract agreement as of December 1, 1957.[21]

Thereafter, William Uy was not allowed to hold office in the U.P. Construction Company and his authority to deal with the Bureau of Public Highways in behalf of the partnership was revoked by Bartolome Puzon who continued with the construction projects alone.[22]

On May 20, 1958, William Uy, claiming that Bartolome Puzon had violated the terms of their partnership agreement, instituted an action in court, seeking, inter alia, the dissolution of the partnership and payment of damages.

Answering, Bartolome Puzon denied that he violated the terms of their agreement claiming that it was the plaintiff, William Uy, who violated the terms thereof. He, likewise, prayed for the dissolution of the partnership and for the payment by the plaintiff of his share in the losses suffered by the partnership.

After appropriate proceedings, the trial court found that the defendant, contrary to the terms of their partnership agreement, failed to contribute his share in the capital of the partnership; applied partnership funds to his personal use; ousted the plaintiff from the management of the firm and caused the failure of the partnership to realize the

expected profits of at least P400,000.00. As a consequence, the trial court dismissed the defendant's counterclaim and ordered the dissolution of the partnership. The trial court further ordered the defendant to pay the plaintiff the sum of P320,103.13.

Hence, the instant appeal by the defendant Bartolome Puzon. During the pendency of the appeal before this Court, the said Bartolome Puzon died, and was substituted by Franco Puzon.

The appellant makes in his brief nineteen (19) assignments of errors, involving questions of fact, which relates to the following points:

- (1) That the appellant is not guilty of breach of contract; and
- (2) That the amounts of money the appellant has been ordered to pay the appellee is not supported by the evidence and the law.

After going over the record, we find no reason for rejecting the findings of fact below, justifying the reversal of the decision appealed from.

The findings of the trial court that the appellant failed to contribute his share in the capital of the partnership is clearly incontrovertible. The record shows that after the appellant's loan in the amount of P150,000.00 was approved by the Philippines National Bank in November, 1955, he gave the amount of P60,000.00 to the appellee who was then managing the construction projects. Of this amount, P40,000.00 was to be applied as reimbursement of the appellee's contribution to the partnership which was used to clear the title to the appellant's property, and the balance of P20,000.00, as Puzon's contribution to the partnership.[23] Thereafter, the appellant failed to make any further contributions to the partnership funds as shown in his letters to the appellee wherein he confessed his inability to put in additional capital to continue with the projects.[24]

Parenthetically, the claim of the appellant that the appellee is equally guilty of not contributing his share in the partnership capital inasmuch as the amount of P40,000.00, allegedly given to him in October, 1956 as partial contribution of the appellee is merely a personal loan of the appellant which he had paid to the appellee, is plainly untenable. The terms of the receipts signed by the appellant are clear and unequivocal that the sums of money given by the appellee are appellee's partial contributions to the partnership capital. Thus, in the receipt for P10,000.00 dated October 24, 1956,[25] the appellant stated:

"Received from Mr. William Uy the sum of TEN THOUSAND PESOS (P10,000.00) in Check No. SC 423285 Equitable Banking Corporation, dated October 24, 1956, as advance contribution of the share of said William Uy in the partnership to be organized between us under the firm name U.P. CONSTRUCTION COMPANY which amount mentioned above will be used by the undersigned to pay his obligations with the Philippine National Bank to effect the release of his mortgages with the said bank." (Underscoring ours)

In the receipt for the amount of P30,000.00 dated October 29, 1956,[26] the appellant also said:

"Received from William Uy the sum of THIRTY THOUSAND PESOS (P30,000.00) in Check No. SC423287, of the Equitable Bank-ing Corporation, as partial contribution of the share of the said William Uy to the U.P. CONSTRUCTION COMPANY for which the undersigned will use the said amount in payment of his obligation to the Rehabilitation Finance Corporation." (Underscoring ours)

The findings of the trial court that the appellant misapplied partnership funds is, likewise, sustained by competent evidence. It is of record that the appellant assigned to the Philippine National Bank all the payments to be received on account of the contracts with the Bureau of Public Highways for the construction of the aforementioned projects to guarantee the repayment of the appellant's personal loan with the said bank.[27] By virtue of the said assignment, the Bureau of Public Highways paid the money due on the partial

accomplishments on the construction projects in question to the Philippine National Bank who, in turn, applied portions of it in payment of the appellant's loan.[28]

The appellant claims, however, that the said assignment was made with the consent of the appellee and that the assignment did not prejudice the partnership as it was reimbursed by the appellant.

But, the appellee categorically stated that the assignment to the Philippine National Bank was made without his prior knowledge and consent and that when he learned of said assignment, he called the attention of the appellant who assured him that the assignment was only temporary as he would transfer the loan to the Rehabilitation Finance Corporation within three (3) months time.[29]

The question of whom to believe being a matter largely dependent on the trier's discretion, the findings of the trial court, who had the better opportunity to examine and appraise the factual issue, certainly deserve respect.

That the assignment to the Philippine National Bank is prejudicial to the partnership cannot be denied. The record shows that during the period from March, 1957 to September, 1959, the appellant Bartolome Puzon received from the Bureau of Public Highways, in payment of the work accomplished on the construction projects, the amount of P1,047,181.01, which amount rightfully and legally belongs to the partnership by virtue of the subcontract agreements between the appellant and the U.P. Construction Company. In view of the assignment made by Puzon to the Philippine National Bank, the latter withheld and applied the amount of P332,539.60 in payment of the appellant's personal loan with the said bank. The balance was deposited in Puzon's current account and only the amount of P27,820.80 was deposited in the current account of the partnership.[30] For sure, if the appellant gave to the partnership all that were earned and due it under the sub-contract agreements, the money would have been used as a safe reserve for the discharge of all obligations of the firm and the partnership would have been able to successfully and profitably prosecute the projects it sub-contracted.

When did the appellant make the reimbursement claimed by him?

For the same period, the appellant actually disbursed for the partnership, in connection with the construction projects, the amount of P952,839.77.[31] Since the appellant received from the Bureau of Public Highways the sum of P1,047,181.01, the appellant has a deficit balance of P94,342.24. The appellant, therefore, did not make complete restitution.

The findings of the trial court that the appellee has been ousted from the management of the partnership is also based upon persuasive evidence. The appellee testified that after he had demanded from the appellant payment of the latter's contribution to the partnership capital, the said appellant did not allow him to hold office in the U.P. Construction Company and his authority to deal with the Bureau of Public Highways was revoked by the appellant.[32]

As the record stands, We cannot say, therefore, that the decision of the trial court is not sustained by the evidence of record as to warrant its reversal.

Since the defendant-appellant was at fault, the trial court properly ordered him to reimburse the plaintiff-appellee whatever amount the latter had invested in or spent for the partnership on account of the construction projects.

How much did the appellee spend in the construction projects in question?

It appears that although the partnership agreement stated that the capital of the partnership is P100,000.00 of which each partner shall contribute to the partnership the amount of P50,000.00 in cash,[33] the partners of the U.P. Construction Company did not contribute their agreed share in the capitalization of the enterprise in lump sums of P50,000.00 each. Aside from the initial amount of P40,000.00 put up by the appellee in October,

1956,[34] the partners' investments took the form of cash advances covering expenses of the construction projects as they were incurred. Since the determination of the amount of the disbursements which each of the partners had made for the construction projects required an examination of various books of account, the trial court appointed two commissioners, designated by the parties, "to examine the books of account of the defendant regarding the U.P. Construction Company and his personal account with particular reference to the Public Works contract for the construction of the Ganyangan-Bato Section, Pagadian- Zamboanga City Road and five (5) Bridges in Malangas-Ganyangan Road, including the payments received by defendant from the Bureau of Public Highways by virtue of the two projects above mentioned, the disbursements or disposition made by defendant of the portion thereof released to him by the Philippine National Bank and in whose account these funds are deposited." [35]

In due time, the commissioners so appointed,[36] submitted their report[37] wherein they indicated the items wherein they are in agreement, as well as their points of disagreement.

In the commissioners' report, the appellee's advances are listed under Credits; the money received from the firm, under Debits; and the resulting monthly investment standings of the partners, under Balances. The commissioners are agreed that at the end of December, 1957, the appellee had a balance of P8,242.39.[38] It is in their respective adjustments of the capital account of the appellee that the commissioners had disagreed.

Mr. Ablaza, designated by the appellant, would want to charge the appellee with the sum of P24,239.48, representing the checks issued by the appellant,[39] and encashed by the appellee or his brother, Uy Han so that the appellee would owe the partnership the amount of P15,997.09.

Mr. Tayag, designated by the appellee, upon the other hand, would credit the appellee the following additional amounts:

- (1) P7,497.80 - items omitted from the books of the partnership but recognized and charged to Miscellaneous Expenses by Mr. Ablaza;
- (2) P65,103.77 - payrolls paid by the appellee in the amount of P128,103.77 less payroll remittances from the appellant in the amount of P63,000.00; and
- (3) P26,027.04 - other expenses incurred by the appellee at the construction site.

With respect to the amount of P24,239.48, claimed by the appellant, we are hereunder adopting the findings of the trial court which we find to be in accord with the evidence:

"To enhance defendant's theory that he should be credited with P24,239.48, he presented checks allegedly given to plaintiff and the latter's brother, Uy Han, marked as Exhibits 2 to 11. However, defendant admitted that said checks were not entered nor recorded in their books of account, as expenses for and in behalf of the partnership or its affairs. On the other hand, Uy Han testified that some of the checks he received were exchanged for cash, while others were used in the purchase of spare parts requisitioned by defendant. This testimony was not refuted to the satisfaction of the Court, considering that Han's explanation thereof is the more plausible, because if they were employed in the prosecution of the partnership projects, the corresponding disbursements would have certainly been recorded in its books, which is not the case. Taking into account that defendant is the custodian of the books of account, his failure to so enter therein the alleged disbursements, accentuates the falsity of his claim on this point." [40]

Besides, as further noted by the trial court, the report of Commissioner Ablaza is unreliable in view of his proclivity to favor the appellant and because of the inaccurate accounting procedure adopted by him in auditing the books of account of the partnership, unlike Mr. Tayag's report which inspires faith and credence.[41]

As explained by Mr. Tayag, the amount of P7,497.80 represented expenses paid by the appellee out of his personal funds which had not been entered in the books of the partnership but which had been recognized and conceded to by the auditor designated by the appellant who included the said amount under "Miscellaneous Expenses." [42]

The explanation of Mr. Tayag on the inclusion of the amount of P65,103.77 is likewise clear and convincing. [43]

As for the sum of P26,027.04; the same represents the expenses which the appellee paid in connection with the projects and not entered in the books of the partnership since all vouchers and receipts were sent to the Manila office which were under the control of the appellant. However, a list of these expenses are incorporated in Exhibits ZZ, ZZ-1 to ZZ-4.

In resume, the appellee's credit balance would be as follows:

Undisputed balance as of Dec.	
1957.....	P 8,242.30
Add: Items omitted from the	
books but recognized and	
charged to Miscellaneous	
Expenses by Mr. Ablaza.....	7,497.80
Add: Payrolls paid by the	
Appellee.....	P128,103.77
Less: Payroll, remittances	
Received.....	63,000.00 - - 65,103.77
Add: Other expenses incurred	
at the site (Exhs. ZZ,	
ZZ-1 to ZZ-4).....	26,027.04
TOTAL. . . .	P106,871.00

At the trial, the appellee presented a claim for the amounts of P3,917.39 and P4,665.00 which he also advanced for the construction projects but which were not included in the Commissioner's Report. [44]

Appellee's total investments in the partnership would, therefore, be:

Appellee's total credits.....	P106,871.00
Add: Unrecorded balances for	
the month of Dec. 1957	
(Exhs. KKK, KKK-1 to	
KKK-19, KKK- 22).....	3,917.39
Add: Payments to Muñoz, as	

sub-contractor of five (5)

Bridges (p. 264, tsn;

Exhs . KKK-20, KKK-21)..... 4,665.00

Total Investments..... P115,453.39

Regarding the award of P200,000.00 as his share in the unrealized profits of the partnership, the appellant contends that the findings of the trial court that the amount of P400,000.00 as reasonable profits of the partnership venture is without any basis and is not supported by the evidence. The appellant maintains that the lower court, in making its determination, did not take into consideration the great risks involved in business operations involving as it does the completion of the projects within a definite period of time, in the face of adverse and often unpredictable circumstances, as well as the fact that the appellee, who was in charge of the projects in the field, contributed in a large measure to the failure of the partnership to realize such profits by his field management.

This argument must be overruled in the light of the law and evidence on the matter. Under Article 2200 of the Civil Code, indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain. In other words *lucrum cessans* is also a basis for indemnification.

Has the appellee failed to make profits because of appellant's breach of contract?

There is no doubt that the contracting business is a profitable one and that the U.P. Construction Company derived some profits from its sub-contracts in the construction of the road and bridges projects despite its deficient working capital and the juggling of its funds by the appellant.

Contrary to the appellant's claim, the partnership showed some profits during the period from July 2, 1956 to December 31, 1957. If the Profit and Loss Statement^[45] showed a net loss of P134,019.43, this was primarily due to the confusing accounting method employed by the auditor who intermixed the cash and accrual method of accounting and the erroneous inclusion of certain items, like personal expenses of the appellant and alleged extraordinary losses due to an accidental plane crash, in the operating expenses of the partnership. Corrected, the Profit and Loss Statement would indicate a net profit of P41,611.28.

For the period from January 1, 1958 to September 30, 1959, the partnership admittedly made a net profit of P52,943.89.^[46]

Besides, as We have heretofore pointed out, the appellant received from the Bureau of Public Highways, in payment of the construction projects in question, the amount of P1,047,181.01^[47] and disbursed the amount of P952,839.77,^[48] leaving an unaccounted balance of P94,342.24. Obviously, this amount is also part of the profits of the partnership.

During the trial of this case, it was discovered that the appellant had money and credits receivable from the projects in question, in the custody of the Bureau of Public Highways, in the amount of P128,669.75, representing the 10% retention of said projects.^[49] After the trial of this case, it was shown that the total retentions deducted from the appellant amounted to P145,358.00.^[50] Surely, these retained amounts also form part of the profits of the partnership.

Had the appellant not been remiss in his obligations as partner and as prime contractor of the construction projects in question as he was bound to perform pursuant to the partnership and sub-contract agreements, and considering the fact that the total contract amount of these two projects is P2,327,335.76, it is reasonable to expect that the partnership would have earned much more than the P334,255.61 We have hereinabove indicated. The award,

therefore, made by the trial court of the amount of P200,000.00, as compensatory damages, is not speculative, but based on reasonable estimate.

WHEREFORE, finding no error in the decision appealed from, the said decision is hereby affirmed with costs against the appellant, it being understood that the liability mentioned herein shall be borne by the estate of the deceased Bartolome Puzon, represented in this instance by the administrator thereof, Franco Puzon.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.
Aquino, J., in the result.

[1] known as Project No. 51-7-5-1, in the amount of P1,976,103.90, which was later on increased to P2,037,880.12 (Exhibit A).

[2] known as Project Nos. 51-7-4 (Spur 1) and 51-7-5-2, in the amount of P258,229.64, which was later on increased to P289,455.64 (Exhibit B).

[3] Exhibit EEE.

[4] Exhibits FFF, GGG.

[5] paragraph 6, Exhibit EEE.

[6] Exhibit HHH.

[7] Exhibit HHH-1.

[8] pp. 248, 313, t.s.n.

[9] Exhibit EEE.

[10] p. 230, t.s.n.; see also Exhibits FFF, GGG.

[11] pp. 230, 241, 249, 299, t.s.n.

[12] Exhibit CCC; pp. 263, 264, t.s.n.

[13] p. 249, t.s.n.

[14] p. 288, t.s.n.

[15] Exhibits 59 and 60.

[16] Exhibit AAA

[17] pp. 237, 238, t.s.n.

[18] Exhibits III-1, III-3, III-5, III-8.

[19] Exhibits III, III-4, III- 6.

[20] Exhibit III-2.

[21] Exhibit 111-7.

[22] p. 276, t.s.n.; Exhibit LLL.

[23] p. 249, t.s.n.

[24] Exhibits III, III-4, III- 6.

In his letter dated November 25, 1957, the appellant said:

"In all our previous conferences and discussions, cordial and sometimes high pitched, to find a solution to our continuous losses, I have confessed to you my inability to put additional capital to continue on with the project. This has been brought about by the change of policy by the RFC in connection with my application filed with that Office, on which is premised the assignment of the contract on my loan from the PNB and which is with your full knowledge and approval.

"Since we are depending on outside capital to help us in the prosecution of the projects, since under the present circumstances and conditions, it is very hard to bring about the necessary outside capital, and because, whatever financing I may be able to place is borrowed and temporary, which you can not conform, then I wish to advise you that, I can no longer continue to go on with our partnership' for the reason that I can not, place additional capital beyond what I have placed including my share of the obligation. " (Exhibit III- 4)

The appellant's position "as no longer able to put additional capital", was reiterated in his letter dated November 27, 1957. (See Exhibit III-6).

[25] Exhibit HHH.

[26] Exhibit HHH-1.

[27] Exhibits 59 and 60.

[28] See Exhibit AAA.

[29] William Uy's testimony reads, as follows:

"Q When did you first know that the two projects of Mr. Puzon at Zamboanga del Sur which was the subject matter of the sub-contract agreement were encumbered by an assignment made by Mr. Puzon in favor of the Philippine National Bank?

"A I think in January or February after my returned from the projects. That was the time he told me about the assignment. I have no knowledge of the assignment." (p. 288, tsn)

"Q When you signed the partnership and sub-contract agreements Exhibits EE and FF and also Exhibit GGG, you already knew that the projects were encumbered by an assignment in favor of the Philippine National Bank?

"A Yes, sir, but he informed me that it was only a formality and that he will make the necessary arrangement because I objected to it on that assignment.

"Q So that in spite of the fact that you knew that the two projects subject matter of these contracts Exhibits FFF and GGG were already assigned by Mr. Puzon to the Philippine National Bank you still signed the sub-contracts Exhibits FFF and GGG?

"A I signed because of his promise to cancel that assignment and transfer it to the RFC within three months time and continue in the meantime that P50,000.00 and if he can not maintain that, he will get that from the outside source." (p. 290, tsn).

[30] Exhibit AAA.

[31] Puzon's advances of P991,054.78 less the amounts of P16,265.01, which were incurred for the personal expenses of Puzon, and P21,950.00, representing questionable disbursements of which P20,000.00 was allegedly lost in an airplane crash, equals P952,839.77 (See Exhibit BBB).

[32] The appellee's testimony on this point, reads:

"Q After you wrote Mr. Puzon Exhibits III-1 to III- 9, what happened?

"A After I have written these letters, I was being driven out of the company and then I was not allowed to hold office in that office we were supposed to be. Then he wrote a letter and in-forming the Bureau of Public Highways that I am no longer connected in that projects and he issued a letter of re-vocation of my power. So my hands are tied.

"Q Showing to you this document which is a revocation of power of Mr. Puzon, what reference has this with the revo-cation referred to by you issued by Mr. Puzon?

"A This is the very letter of revocation of power given to me.

"Q Whose signature is this which reads 'Bartolome Puzon'?

"A That is the signature of Mr. Puzon.

"Q Below the signature, there appears a signature which reads 'Zenaida O. Bel-tran', whose signature is that?

"A That is the signature of one of the clerks of the company.

"ATTY. SALVADOR:

For purposes of identification, we re-request that this revocation of power of Mr. Puzon be marked as Exhibit LLL, for the plaintiff.

"COURT:

Let it be so marked." (pp. 276-277, tsn).

[33] par. 6, Exhibit EEE.

[34] Exhibits HHH, HHH-1.

[35] p. 53, Record on Appeal.

[36] Jesus B. Tayag, for the plaintiff, and Angel C. Ablaza, for the defendant.

[37] p. 58, Record on Appeal.

[38] pp. 61, 64, Record on Appeal.

[39] Exhibits 2 to 11, inclusive.

[40] pp. 241-242, Record on Appeal.

[41] pp. 246-247, Record on Appeal.

[42] pp. 163-165, t.s.n.

[43] Mr. Tayag's testimony on this point reads:

"Q We notice Mr. Tayag under the capital account in your report, Commissioner's Report, you made adjustments

in the form of payrolls paid in 1956 to 1957 in the amount of P128,103.77, would you please explain why you made such adjustment?

"A I believe, I have already explained in my comment. When I was examining the books of the U.P. Construction Com-pany, I found out that the amount charge to salaries and wages were remittances by telegraphic transfers to the Zamboanga Office. In proper accounting, remittances should not have been entered as salaries immediately because you don't know what disposition would be made finally of the amount remitted, until the amounts are actually paid and covered by payrolls in Zamboanga Office, nothing should be re-corded as salaries and wage. Instead, the remittances should have been charged to the incharge or manager of the project or payroll clerk as account receivable. When the particular payrolls are reported back to Manila, that is the time you enter the actual amount paid. Because while the remittances in round figures say P10,000.00, the actual payroll would not be exactly that amount. At the time of the receipt of the payrolls, that is the only time the adjust-ment of salaries and wages should be made. So I asked the personnel of the U.P. Con-struction Company whether there were pay-rolls in the files. I was told that there were payrolls but they would not release to me without permission from Mr. Puzon or his attorney. So, I contacted Mr. Uy by telephone whether there were payrolls or papers in the project site. He told me that there were and that they were sent to Manila. As a proof, he brought to me a list in detail containing the names of the employees by the month and the amount received by them. When I returned back to the office of Mr. Puzon, I inquired again whether the payrolls will be lent to me. There was much delay and later on I under-stood that Mrs. Barrera telephoned the attorney of Mr. Puzon, who agreed to re-lease the payrolls to me. I checked over the list of Mr. Uy with the payrolls. I found out that the amount corresponding to each employee in his list tally with those in the payrolls. But the payrolls most of them were not in total. So there was no way of knowing the total amount in the pay-rolls. I believe there is reasonable proof that those were the payrolls that were paid by Mr. Uy. That is the reason why I in-cluded in my Exhibit A the amount of P128,103.77.

"Q Do you have the list of the persons to whom payments were made by Mr. Uy which you said was given to you prior to your seeing the payrolls in the U.P. Construction Company's office and con-fronting it with the said payrolls which you found that they tally?

"A Yes, sir, I have the list given to me by Mr. Uy which shows here 'Sum-mary payrolls for the month of October 1956 to January 1957' already signed. (Witness handing to counsel for the plaintiff the said list).

"ATTY. SALVADOR:

Consisting of nine pages, which for pur-poses of identification, we request that the same be marked as Exhibits YY, YY-1 to YY-8.

"COURT:

Let them be so marked.

"ATTY. SALVADOR:

"Q Now, in your adjustment Mr. Tayag un-der the capital account of Mr. Uy, Ex-hibit A-Tayag, there is a deduction from said amount of P128,103.77, represent-ing payrolls paid by, him in the amount of P63,000.00, what does this amount represent?

"A As I have said the amount charged to salaries and wages in the books of Mr. Puzon were the remittances to Zambo-anga Office intended for the payment of the laborers. The amount of P63,000.00 as mentioned by me in schedule 2, were the same remittances which I deducted from the total of these payrolls. I de-ducted this amount

of P63,000.00 from the P128,000.00 plus resulting only in the amount of P65,103.77 which is the net credit carried to the account of Mr. Uy." (pp. 165-169, tsn)

[44] pp. 263-264, tsn; See also Exhibits KKK, KKK-1 to KKK-22.

[45] p. 68, Record on Appeal.

[46] p. 70, Record on Appeal.

[47] Exhibit AAA.

[48] See footnote 31.

[49] p. 135, Record on Appeal.

[50] pp. 267-268, Record on Appeal.

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