

PEDRO S. LIMJOCO, SR., JOSE LIMJOCO, WILLY CASTOR AND JOSE FOZ, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND AURORA COPIACO, RESPONDENTS.

G.R. No. 105450. December 17, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari which seeks to reverse the decision* of the Court of Appeals in CA GR No. 28809-CV dated 6 February 1992 entitled "Aurora I. Copiaco versus Pedro Limjoco, et. al."

The case before us involves certain "pakiao" contracts for the repair and maintenance of the Tarlac Right Earthdike located in Paniqui, Tarlac which is under the administrative supervision and control of the Agno River Flood Control System of the then Bureau of Public Works (now Department of Public Works and Highways).

It is not disputed that private respondent, Aurora Copiaco a licensed public works contractor, was awarded the above-mentioned "pakiao" contracts on 27 February 1978. She filed a complaint against herein petitioners in the Regional Trial Court of Pasig alleging that she had entered into an informal partnership (joint venture) with herein petitioners with the agreement that:

1. They would jointly undertake the project subject of the "pakiao" contracts.
2. Petitioner Pedro Limjoco, Sr. would personally manage, supervise and attend to the project.
3. All expenses incurred in the undertaking of the project shall be properly evidenced by receipts and documents.
4. Upon completion of the project, Limjoco, Sr. would render a formal accounting.
5. The net proceeds, after deducting the cost of the project, would be divided equally, with 50% going to Aurora Copiaco and the other 50% to the petitioners.

Aurora Copiaco prayed in her complaint that after trial, the defendant (herein petitioner) Pedro Limjoco, Sr. be ordered to render a true and correct formal accounting as manager of the Joint Venture Agreement and to pay damages and costs of suit.

In his answer, Pedro Limjoco, Sr. denied having entered into any joint venture agreement with Aurora Copiaco. Limjoco alleged that Aurora Copiaco had sub-contracted or assigned the "pakiao" contracts to him after he paid Copiaco a total of Three Hundred and Seventy Five Thousand Pesos (P375,000.00) representing Twenty-Five Percent (25%) of the total consideration of the contracts.

Neither Copiaco nor Limjoco, Sr. was able to show any written agreement to support their respective allegations.

The evidence for Aurora Copiaco consists of her testimony, that of Engineer Justo N. Pablico of the Bureau of Public Works and of Romeo Dizon, a journalist.

Aurora Copiaco testified that as owner of AIC Construc-tion, several "pakiao" contracts for the repair and maintenance of the Tarlac Right Earthdike were awarded to her on 27 February 1978 by the Director of Public Works represented by Justo N. Pablico. The "pakiao" contracts were presented and marked as Exhibits "A" to "A-17" for the plaintiff Copiaco. She further stated that she entered into a joint venture agreement with Pedro S. Limjoco, Sr. to jointly undertake the project.[1] To refute the allegation of Limjoco that the "pakiao" contracts were assigned or subcontracted to him by Copiaco, the latter presented a letter signed by Justo N. Pablico of the Bureau of Public Works, dated 14 June 1978 addressed to the Regional Auditor of the Agno Flood Control System stating that according to records of the office, AIC Construction is the registered contractor of the project subject of the "pakiao" contracts and that his office is not aware that the project has been subcontracted,[2] and a certification signed by Assistant Regional Auditor Vicente M. Victor stating that he had inspected and verified the repair and maintenance work on the Tarlac Right Earthdike which is under contract to AIC Construction, represented by Aurora I. Copiaco.[3]

Copiaco further testified that Limjoco, Sr. even submit- ted an informal partial accounting[4] and that she had issued on 28 and 29 June 1978 two (2) checks[5] to Pedro Limjoco, Sr. for the total amount of One Hundred and Fifty Thousand Pesos (P150,00.00) and additionally paid Limjoco Seventy-Five Thousand Pesos (P75,60.00) on 2 August 1978[6] which amounts represented expenditures for the project[7] in relation to the alleged joint venture.

To support her claim for damages, Copiaco presented an affidavit dated 14 July 1978 executed by Pedro S. Limjoco, Sr.,[8] the contents of which allege that he (Limjoco) had a verbal agreement with Aurora I. Copiaco to be paid twenty-five percent (25%) of the total amount of the contract which is One Million Five Hundred Thirty-Three Thousand Pesos (P1,533,000.00). Limjoco stated that, in accordance with their verbal contract, he repaired and maintained the described dike defraying all expenses for labor and materials. It was further alleged in the affidavit that Copiaco contrary to their agreement directly collected from the Agno River Control Office the sum of over P600,000.00 without his (Limjoco's) knowledge, which amount rightfully belongs to him (Limjoco) as the sub-contractor. This affidavit became the basis of complaints for estafa filed by Limjoco against Aurora I. Copiaco and of news items published in the Evening Post on 24 August 1978.[9] Copiaco alleged that the complaints filed by Limjoco as well as the news items which were published about estafa cases against her caused a "tremendous setback" in her business, destroyed her business credit and made the government hesitant to award any new contracts to her.[10]

Defendants, Pedro Limjoco, Sr., Jose Limjoco, Willy Castor and Jose Foz, on the other hand, denied having entered into any joint venture agreement with Aurora I. Copiaco involving the "pakiao" contracts.

The defense also attempted to impeach Copiaco's credi-bility by presenting evidence that she was in fact married to Alfredo Copiaco on 14 April 1978 as shown by the Certificate of Live Birth of their daughter.[11] However, Aurora I. Copiaco, in her testimony, had stated that she was single.[12]

To refute the allegation of Copiaco that there was a joint venture agreement entered into, the defendants presented the testimony of Aurora I. Copiaco herself as the defendant in a complaint filed by Pedro T. Limjoco, Jr. for a sum of money, where she stated that Mr. Pedro Limjoco, Sr. was a foreman in her (Copiaco's) project in the Tarlac Right Earthdike.[13]

The defendants likewise presented a general voucher[14] and an Affidavit executed by Aurora I. Copiaco[15] which were used by the latter in collecting part of the proceeds for the project from the Department of Public Works.

Also presented were letters from Justo N. Publico,[16] the Daily Accomplishment Reports for the Tarlac Right

Earthdike Project from 1 January 1978 up to 25 June 1978,[17] as well as general vouchers and certificates of acceptance[18] all of which were presented by the defendants to prove that it was Pedro S. Limjoco who repaired and maintained the Tarlac Right Earthdike Project.

The case in the trial court was left undecided by Judge Rafael de la Cruz.* The Judiciary Planning Development and Implementation Office (JPDIO) of the Supreme Court withdrew the case from the trial court in Pasig and Assisting Judge Ildefonso E. Gascon was assigned to dispose of the case pursuant to Administrative Order No. 26-90 issued by the Supreme Court on 16 February 1990.

On 2 April 1990, Judge Gascon rendered a decision the dispositive part of which reads:

"WHEREFORE, premises considered, judgment is rendered:

- 1.) Ordering defendants to submit a proper accounting of the expenses and expenditures of the project adverted to with proper receipts and documents;
- 2.) Ordering the defendants to account for the proceeds representing the balance of the 81% collected by the plaintiff;
- 3.) To pay the plaintiff jointly and severally P250,000.00 moral damages;
- 4.) To pay the plaintiff P100,000.00 for exemplary damages;
- 5.) To pay the plaintiff by way of attorney's fees P100,000.00;
- 6.) Dismissing defendants' counterclaim;
- 7.) Defendants to pay costs of suit."[19]

Herein petitioners appealed the trial court decision to the Court of Appeals which affirmed the decision "subject to the elimination of the aforesaid damages and attorney's fees." [20] Their motion for reconsideration was denied on 18 May 1992 and the present petition for review was filed on 5 June 1992.

The petitioners raise the following alleged errors of the respondent Court:

"I. x x x PRIVATE RESPONDENT AURORA COPIACO SHOULD RETURN OR REFUND THE P698,000.28 TO PETITIONER PEDRO LIMJOCO, SR.

II. (IN) ORDERING PETITIONERS TO SUBMIT A PROPER ACCOUNTING OF THE EXPENSES AND EXPENDITURES OF THE PROJECT ADVERTED TO WITH PROPER RECEIPTS AND DOCUMENTS TO PLAINTIFF, HEREIN PRIVATE RESPONDENT.

III. (IN) ORDERING THE DEFENDANTS (HEREIN PETITIONERS) TO ACCOUNT FOR THE PROCEEDS REPRESENTING THE BALANCE OF THE 81% COLLECTED BY THE PLAINTIFF (HEREIN PRIVATE RESPONDENT).

IV. (IN) ORDERING PETITIONERS TO PAY THE COSTS OF SUIT." [21]

There are basically two (2) factors to be considered in determining the merits of this case on appeal, namely:

1. The Assisting Judge from the JPDIO who rendered the decision of the trial court was not the judge who heard the case on the merits; and
2. The petitioner and the private respondents failed to present any written contract or agreement to support their respective allegations.

The respondent Court of Appeals correctly observed that:

"A careful perusal of the records on hand indicate a variance of facts between the [private respondent's] version on one hand, and that of the [petitioner's] on the other. Obviously, it is (private respondent's) word against the [petitioner's], and vice-versa.

Moreover, it is observed that the evidence presented on both sides is rather weak x x x." [22]

The conclusion drawn by the Court of Appeals from the above observations to the effect that -

"x x x in cases such as this, the Court is constrained to rely on the sound judgment of the lower court in appreciating the evidence adduced before it. Well settled is the rule in both criminal and civil cases that in the matter of proper appreciation of evidence both real and testimonial the findings of the trial court are given great and accorded the highest respect by the appellate court (citations omitted)." [23]

cannot however be upheld considering that the judge who decided the case in the trial court was not the judge who conducted the hearings. He was unable to observe the demeanor and conduct of the witnesses while they were on the stand.

A re-examination of the records of this case was indis-pensable in trying to determine the true agreement between the parties.

The trial court in ruling against the existence of an assignment or sub-contracting to petitioner, Pedro Limjoco, Sr. correctly took into account the absence of any receipt to show that herein petitioner had paid private respondent Copiaco in consideration of the alleged assignment or sub-contract. The other evidence presented by the petitioners, while tending to prove the extent of the work they completed, do not in any way support their contention that the project was assigned to them.

On the other hand, private respondent Aurora L. Copiaco was able to show that the "pakiao" contracts were awarded to AIC Construction which she owned. It was also shown that petitioner Pedro S. Limjoco, Sr. received a total of Two Hundred and Twenty-Five Thousand Pesos (P225,000.00) from private respondent Copiaco. The amount represented expenditures for the project. It should be noted that Pedro S. Limjoco, Sr. failed to successfully deny or refute his receipt of the aforementioned amount. Finally, private respondent Aurora I. Copiaco was able to obtain certificates that the "pakiao" contracts awarded to AIC Construction had not been assigned or subcontracted.

The preponderance of evidence in this case clearly leans to the existence of the joint venture (informal partnership) between the parties.

WHEREFORE, premises considered the petition for review is DENIED and the decision of the respondent Court of Appeals is hereby AFFIRMED with costs against the petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

* Penned by Justice Segundino G. Chua with Justices Santiago M. Kapunan and Luis L. Victor concurring.

[1] TSN, 8 February 1980, pp. 10-12

[2] Exhibit "C"

[3] Exhibit "D"

[4] Exhibit "E"

[5] Exhibits "F" and "G"

[6] Exhibit "H"

[7] TSN, 8 February 1980, pp. 35-43

[8] Exhibit "J"

[9] Exhibit "K"

[10] TSN, 8 February 1980, pp. 58-61

[11] Exhibit "3"

[12] TSN, 8 February 1980, p. 2

[13] Exhibit "2-A"

[14] Exhibit "4"

[15] Exhibit "5"

[16] Exhibits "10", "12" and "13"

[17] Exhibits "14" to "14-RRRRRRRR"

[18] Exhibits "17" to "17-EE"

* Presiding Judge, Branch 160, Pasig, M.M.

[19] Original Records, pp. 399-400

[20] Rollo, p. 33

[21] Rollo, p. 134

[22] Rollo, p. 32

[23] Rollo, pp. 32-33

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