

**MANILA BAY CLUB CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, MODESTA SABENIANO AND MIRIAM SABENIANO, JUDITH SABENIANO, JOY DENNIS SABENIANO, ET. AL., RESPONDENTS.***G.R. No. 110015. October 13, 1995*

Ponente: FRANCISCO, J.

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After carefully perusing the instant motion for reconsideration, petitioner's arguments, in sum, dwell on the focal issues involved in the controversy which have been passed upon in the Court's July 11, 1995 Decision sought to be reconsidered. No reasons of significant and compelling import have been advanced to alter the Court's observation and conclusion that 1) petitioner's non-designation of private respondents as beneficiaries of the insurance policies was a violation of the "insurance clause" amounting to a "substantial", and not a mere "slight or casual", breach entitling private respondents to rescind the lease contract, and 2) the amount of rentals/damages petitioner was bound to pay was correctly adjudged by respondent Court of Appeals after slightly modifying the trial court's assessment. The Court, however, would like to make some additional disquisitions in response to certain noteworthy contentions raised by petitioner.

Anent the issue of the rentals/damages, petitioner avers that "the Decision awards excessive damages" since "the Decision of this Honorable Court condemned the petitioner to pay, up front, the total sum of P12,029,800.00", "a staggering sum by any calculation x x x that will probably reduce the petitioner to utter bankruptcy". It is likewise maintained that private respondents will be "unjustly enriched" simply because petitioner failed to present controverting evidence, or rebut Mrs. Sabeniano's testimony which, according to petitioner, is mere "speculation".

We need to stress the one decisive fact that petitioner had all the opportunity at its disposal before the trial court to refute, with all allowable pieces of evidence it can produce, Mrs. Sabeniano's testimony or any other evidence of private respondents, and there is nothing to indicate that petitioner was ever denied such opportunity/opportunities by the trial court. The trial court, respondent court and this Court cannot be faulted for taking private respondents' uncontroverted evidence below vis-a-vis the monthly rentals on its face value — no matter how "staggering" it may appear — for petitioner's omission to rebut that which would have naturally invited an immediate, pervasive and stiff opposition from petitioner created an adverse inference that either the controverting evidences to be presented by petitioner will only prejudice its case, or that the uncontroverted evidence of private respondents indeed speaks of the truth. And such adverse inference, recognized and adhered to by courts in judging the weight of evidence in all kinds of proceedings, surely is not without basis — the rationale and effect of which rest on sound, logical and practical considerations.

"The presumption that a man will do that which tends to his obvious advantage, if he possesses the means, supplies a most important test for judging of the comparative weight of evidence...If, on the supposition that a charge or claim is unfounded, the party against whom it is made has evidence within his reach by which he may repel that which is offered to his prejudice, his omission to do so supplies a strong presumption that the charge or claim is well founded; it would be contrary to every principle of reason, and to all experience of

human conduct, to form any other conclusion." (Starkie on Evidence, p. 846, Moore on Facts, Vol. I, p. 544)

"Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they existed and to rebut the inferences which the proof tends to establish, and he neglects or refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting, would support the inference against him." (Pennsylvania R. Co. v. Anoka Nat. Bank, 108 Fed. Rep. 482, 486, 47 C.C.A. 454, per Caldwell, C.J., Moore on Facts, Vol. I, p. 545. Underscoring supplied)

"It is a well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary." (Missouri, etc. R. Co. v. Elliott, 102 Fed. Rep. 96, 102, 42 C.C.A. 188, per Caldwell, C.J., Moore on Facts, Vol. I, p. 546. Underscoring supplied)

"No rule of law is better settled than that a party having it in his power to prove a fact, if it exists, which, if proved, would benefit him, his failure to prove it must be taken as conclusive that the fact does not exist." (Wheeling v. Hawley, 18 W. Va. 472, 476, per Patterson, J., quoted in Union Trust Co. v. McClellan, 40 W. Va. 405, 21 S.E. Rep. 1025, Moore on Facts, Vol. I, p. 544)

"Where the burden is on a party to a suit to prove a material fact in issue, the failure, without excuse, to produce an important and necessary witness to such fact raises the conclusive presumption that such witness's testimony, if introduced, would be adverse to the pretensions of such party." (Union Trust Co. v. McClellan, 40 W. Va. 405, 21 S.E. Rep. 1025, Moore on Facts, Vol. I, p. 545)

"The rule is that where a party to an issue on trial has proof in his power which, if produced, would render material, but doubtful, facts certain, the law presumes against him if he omits to produce that proof, and authorizes a jury to resolve all doubts adversely to his defense." (People v. Sharp, 107 N.Y. 427, 465, 14 N.E. Rep. 319, 342, per Danforth, J., Moore on Facts, Vol. I, p. 546)

"Where facts are in evidence affording legitimate inferences going to establish the ultimate fact that the evidence is designed to prove, and the party to be affected by the proof, with an opportunity to do so, fails to deny or explain them, they may well be taken as admitted with all the effect of the inferences afforded." (Somers v. McCready, 96 Md. 437, 53 Atl. Rep. 1117, per Jones, C.J., Moore on Facts, Vol. I, p. 559)

"The ordinary rule is that one who has knowledge peculiarly within his own control, and refuses to divulge it, cannot complain if the court puts the most unfavorable construction upon his silence, and infers that a disclosure would have shown the fact to be as claimed by the opposing party." (Societe, etc., v. Allen, 90 Fed. Rep. 815, 817, 33 C.C.A. 282, per Taft, C.J., Moore on Facts, Vol. I, p. 561)

The inference still holds even if it be assumed, for argument's sake, that Mrs. Sabeniano's testimony is improbable or weak, for it has likewise been said that:

"Even if a party's testimony is improbable, the failure of the opposite party to contradict it, although it was entirely within his power to do so if it were false, fully entitles it to belief." (Nutting v. El. R. Co., 21 N.Y. App. Div. 72, 47 N.Y. Supp. 327, Moore on Facts, Vol. I, p. 572)

"Weak evidence becomes strong by the neglect of the party against whom it is put in, in not showing by means within the easy control of that party that the conclusion drawn from such evidence is untrue." (Pittsburgh, etc., R. Co. v. Callaghan, 50 Ill. App. 676, 681, Moore on Facts, Vol. I, p. 572)

"As weak evidence is often strengthened by failure of an opposing party to contradict by evidence within his power, so the trier of facts may infer that testimony in chief is worth its full face value when the other party is content to let it stand without cross-examination or contradiction by other evidence." (Moore on Facts, Vol. II,

p. 1417)

As petitioner seemed willing to admit private respondents' evidence bearing on the fair rental value without question, the trial court was well-justified in having done the same - exhibiting, still, due consideration when it reduced the monthly rental value from P400,000.00 as per Mrs. Sabeniano's uncontroverted testimony, to P250,000.00. In answer, therefore, to petitioner's questions, i.e., "x x x does Mrs. Sabeniano's testimony cease to be speculation because the petitioner failed to present `controverting evidence'?", and "The fact that Mrs. Sabeniano could have testified that she was offered P1 Million, indeed, P10 Million, indeed, P100 Million but would that, too, `stand' simply because the petitioner failed to rebut it?", the Court is compelled, quite regrettably, to answer in the affirmative.

With regard to petitioner's contention that it "did not raise a fresh matter on appeal", the Court merely reiterates that petitioner's invocation of the principles of trust found its way only for the first time in its "Motion For Reconsideration" of the respondent court's decision. If well-recognized jurisprudence precludes raising an issue only for the first time on appeal proper, with more reason should such issue be disallowed or disregarded when initially raised only in a motion for reconsideration of the decision of the appellate court.

We cannot finally put this case to rest without confronting the perceived "unusual dispatch" in its resolution the petitioner is "genuinely disturbed" of - consisting in the rendition of the judgment (July 11, 1995) having been made in six (6) months from the ponente's appointment to the Court on January 5, 1995. Petitioner amplifies that: 1) "x x x hardly has the ponente warmed his seat, the case would be decided x x x", and 2) "x x x when prior to the appointment of the ponente, it took the rest of the Justices of the Third Division of this Honorable Court more than a year to deliberate on the Petition, x x x".

It is the practice of the Court to encourage the speedy resolution of cases unloaded to a newly-appointed Member, especially those cases that are already ripe for decision and in which motions for their early resolution have been filed by either of the parties concerned, as in this case. This is the reason why it became imperative to resolve this case at the soonest possible time and without further delay, lest we be charged with footdragging on the case thereby putting the Court in a more objectionable situation.

In fact, the undersigned ponente has come across some of the maiden decisions of one of petitioner's counsels, Mr. Justice Abraham F. Sarmiento, a distinguished former magistrate of this Court himself who the undersigned holds in high-respect, which were disposed of by him in less than six (6) months from the date of his appointment to the Court on January 26, 1987. To name a few are: *People v. Decierdo*, G.R. No. L-46956, May 7, 1987, 149 SCRA 496; *People v. Saavedra*, G.R. No. L-48738, May 18, 1987, 149 SCRA 610; *People v. Pecato*, G.R. No. L-41008, June 18, 1987, 151 SCRA 14; *People v. Ferrera*, G.R. No. L-66965, June 18, 1987, 151 SCRA 113; *Madrigal & Company, Inc. v. Zamora*, G.R. Nos. L-49023 and L-48237, June 30, 1987, 151 SCRA 355 (Labor Case); *Banco Filipino Savings & Mortgage Bank v. Pardo*, G.R. No. L-55354, June 30, 1987, 151 SCRA 481; and *Del Rosario v. Hamoy*, G.R. No. L-77154, June 30, 1987, 151 SCRA 719. And in all honesty, the undersigned ponente regards such prompt disposition as something commendable, not condemnable.

WHEREFORE, premises considered, the Motion For Reconsideration is hereby DENIED with FINALITY.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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