

LEOPOLDO ALICBUSAN, PETITIONER, VS. COURT OF APPEALS, CESAR S. CORDERO AND BABY'S CANTEEN, RESPONDENTS.

G.R. No. 113905. March 07, 1997

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

As a result of the dismissal of his appeal by respondent Court of Appeals in CA-G. R. CV No. 34058, petitioner is now before this Court through this petition for review on certiorari under Rule 45 seeking the reversal of respondent court's decision dated October 29, 1993 and the resolution of February 4, 1994, which petitioner described as a "manifestly erroneous appreciation by the Court of Appeals of the rules of evidence, in particular the presumption contained therein and the proper party whose burden is to dispute them." [1]

The controversy stemmed from a complaint filed by private respondents Cesar Cordero and Baby's Canteen against Leopoldo Alicbusan and Philippine Service Enterprises, Inc. before the Regional Trial Court of Pasay City.

The circumstances which led to this suit as summarized in the assailed decision are as follows:

"Plaintiff-appellee Cesar Cordero and defendant appellant Leopoldo Alicbusan were partners in the operation of Baby's Canteen located in the Philtranco terminal in Pasay City. Under the terms of their partnership agreement, Cordero assumed the position of Managing Partner of the venture while Alicbusan took care of accounting, records keeping and other comptrollership functions (Exhibit '1'). The partnership was to exist for a fixed term, between July 1981 up to July 1984. However, on expiration of the said period both Cordero and appellant Alicbusan continued their relationship under the original term.

"On May 11, 1990, plaintiff Cordero instituted Civil Case No. 7322 with the court below for collection for various sums totalling P209,497.36 which was later increased to P309,581.51 in a supplemental complaint (pp. 87-88, Rollo). The claim arose from an arrangement whereby employees of Philtranco were allowed to buy goods and other items from Baby's Canteen on credit which payments were subsequently deducted by Philtranco from the employees' salaries. The total amount was then remitted by Philtranco fifteen days later.

"According to plaintiff-appellee Cordero, the remittances of salary deductions for the months of February, March, April up to May 15, 1990 were withheld by Philtranco on the instigation of herein appellant Leopoldo Alicbusan as President of said company (p. 88, Record). Plaintiff-appellee Cordero averred that the withholding of the remittances to Baby's Canteen was motivated by bad faith on the part of appellant Alicbusan because of business differences arising from another partnership operation between plaintiff and appellant in Sariaya, Quezon (TSN, August 24, 1990, p. 7).

"Additionally, in his supplemental complaint dated 29 June, 1990, plaintiff contended that defendant, in retaliation of (sic) appellee's filing of the original complaint and in order to harass the latter, served notice of termination of lease of a stall leased by plaintiff's wife (Stall No. 6) at the Philtranco Terminal in Malibay, Pasay City (p. 70, Record). According to plaintiff Cordero, all the other leaseholders of stalls in the terminal were not served notice of termination which showed that plaintiff's wife was being singled out, in bad faith.

"In response, defendant Alicbusan averred that he transferred all his rights and interests over Baby's Canteen for the sum of Two Hundred and Fifty Thousand Pesos (P250,000.00) as evidenced by a Deed of Sale and Transfer of Right (Record, p. 40) between the parties on April 5, 1989. Under the said deed, plaintiff-appellee Cordero bound himself to pay under the following terms:

'1. That the total purchase price shall be TWO HUNDRED FIFTY THOUSAND (P250,000.00) PESOS, Philippine Currency with a downpayment of P50,000.00 which the VENDEE/TRANSFEREE shall pay upon the signing of this agreement;

'2. That the balance shall be payable in twenty (20) monthly installments at P10,000.00 per month, with postdated checks, the first installment being due with (sic) the first 5 days of every month thereafter until the balance shall have been fully paid.'

"However, according to appellant Alicbusan, both parties subsequently agreed to forego the P50,000.00 downpayment under an amended schedule in which Cordero obligated himself to pay increased and accelerated installment payments (Record, p. 40). These payments totalling P90,500.00 were made between the 8th day of May, 1989 and November 24, 1989 in various amounts. According to appellant, plaintiff Cordero stopped paying his installment payments after this period in spite of several demands by the defendant (p. 41, Record)."[2]

In its decision dated February 7, 1991, the Regional Trial Court of Pasay City ruled in favor of private respondents Cordero and Baby's Canteen, upholding the continued existence of a partnership between respondent Cordero and petitioner, and ordered as follows:

"IN VIEW OF THE FOREGOING, this Court orders:

a) the defendant Philtranco to pay the plaintiffs the following amounts:

1) P290,912.31, representing the credits for the months of February, March, April and up to May 15, 1990;

2) P30,000.00 as moral damages for the bad faith displayed by their president Alicbusan;

b) Defendant Alicbusan to pay the plaintiffs the amount of P30,000 as moral damages;

c) Defendants Alicbusan and Philtranco to pay jointly and severally, the plaintiffs Cordero and Baby's Canteen the amount of P50,000.00 as attorney's fees;

d) As counterclaim of the defendant Philtranco, plaintiffs Cordero and Baby's Canteen to pay the defendant Philtranco the amount of P24,000.00 as overdue rentals;

e) Defendants Alicbusan and Philtranco to pay for the costs of this suit.

SO ORDERED."[3]

Subsequently, respondent Cordero and Philtranco entered into a compromise agreement with respect to their liabilities to each other by offsetting their outstanding obligations and waiving whatever actions they may have against each other. It was however agreed upon that the compromise agreement will not affect or prejudice petitioner Alicbusan's appeal from the judgment.[4]

For his part, Alicbusan proceeded to file an appeal with the Court of Appeals assailing the trial court's finding that the deed of sale and transfer of rights between petitioner and Cordero was fictitious, hence their partnership continued to exist. Additionally, petitioner argued that respondent Cordero should have been ordered to pay the amount of P129,500.00 representing the balance of the sale of his rights in the partnership and that it was error to

adjudge him liable for moral damages and attorney's fees.

On October 29, 1993, respondent Court rendered the assailed decision, affirming the judgment of the trial court that the deed of sale transferring petitioner's rights in the partnership to private respondent Cordero was simulated and that petitioner acted in bad faith in withholding the remittances of Philtranco to the partnership enterprise. Thus, respondent court affirmed the award of moral damages as well as that of attorney's fees in favor of private respondents, subject only to the modification that the latter award was reduced into half. Petitioner sought reconsideration but the same was denied in the resolution dated February 4, 1994.

Petitioner is now before this Court raising the same errors that it presented before the respondent court.

At the core of petitioner's assigned errors is the issue of whether or not there is still a partnership between petitioner and respondent Cordero. Evidently, this issue, as well as the other points raised by petitioner, are factual matters which by the weight of judicial precedents cannot be inquired into by this Court in an appeal on certiorari. This Court can no longer be tasked to go over the proofs presented by the parties and analyze, assess and weigh them to ascertain if the trial court and the appellate court were correct in according superior credit to this or that piece of evidence of one party or the other.[5]

Petitioner faults the respondent court for disregarding the legal presumptions in favor of the validity of the deed of sale of his partnership rights, namely: (1) that private transactions have been fair and regular; (2) that the ordinary course of business has been followed; and (3) that there is sufficient consideration for a contract. He contends that contrary to the Rules of Evidence, respondent court shifted the burden of proof against his favor.

These arguments are misplaced. Petitioner overlooks the fact that the presumption he invokes are mere presumptions *juris tantum*, these are disputable presumptions which can be rebutted by evidence to the contrary. But as previously adverted, the calibration of these evidence and the relative weight accorded to them are within the exclusive domain of both the trial and appellate courts which cannot be set aside by this Court absent any showing that there is no evidence to support the conclusion drawn by the court *a quo*. [6] In the instant case, contrary to petitioner's assertion, the record is replete with evidence establishing the fact that the deed of sale evidencing the transfer of rights in respondent Cordero's favor was fictitious and simulated. This was amply confirmed by the following findings of respondent Court of Appeals, to which we are in complete accord:

"x x x The fact of the matter is that the terms enumerated under the deed of sale were never complied with. Plaintiff Cordero never paid the Fifty Thousand Peso downpayment and defendant has adduced no evidence to show that the installments which plaintiff-appellee was supposed to have paid under the terms of the agreement were ever paid or tendered.

"The Deed of Sale and Transfer of Rights dated the 5th of April, 1989 stipulates the following terms and conditions: 1. a total purchase price of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00); 2. Downpayment of FIFTY THOUSAND PESOS (P50,000.00); 3. Twenty monthly installments at P10,000.00 per month, payable through post-dated checks, the first installment due within the first five days of May and the succeeding installments being due within the first five days of every month thereafter until the balance shall have been fully paid (Exhibit 'G') In spite of the express conditions of sale, none of these were met and no post-dated checks were advanced. Instead, a series of checks of varying amounts - not TEN THOUSAND PESOS (P10,000.00) as stipulated in the disputed deed of sale - were issued by herein appellee, which the court below found to be dividends from the partnership profits. These checks were issued up to the fifth of January, 1990, long after both parties agreed to the alleged sale (p. 74, Rollo).

"These events, together with the defendant's apparent performance of his comptrollership functions after the deed was signed, militate against the defendant's contention that the partnership was terminated on the 5th of April 1989. Based on the evidence at hand, defendant Alicbusan continued to oversee and check daily sales

reports and vouchers. He was the approving authority as far as check vouchers were concerned. Furthermore, the evidence shows that he subsequently delegated this function to his wife (Exh. 'H', 'H-1'; Exh. 'I', 'I-1'; Exh. 'J'). An Audit Report (Exh. 'N') carries notations and suggestions by defendant Alicbusan, which attached balance sheet dated June 30, 1989 lists the Partner's capital as P42,362.00 each for LCA (identified as Leopoldo Alicbusan, see TSN, Aug. 24, 1990, p. 120) and CSC (identified as Cesar C. Cordero, herein plaintiff, *ibid*), for a total partnership capital of P84,724.00. During this time, the defendant did not object to his inclusion in the report as a partner of Baby's Canteen, which he would have if the sale were not simulated."^[7]

Finally, on the propriety of the award of moral damages, we find no reason to set aside the same considering that both the Court of Appeals and the trial court found that petitioner acted in gross and evident bad faith in exercising his power and influence as president of Philtranco and caused the withholding of the remittances due to Baby's Canteen from Philtranco.^[8] The award of attorney's fees is also in order as a consequence of petitioner's unjust refusal to settle private respondents' just and lawful claim which constrained the latter to litigate in court.

WHEREFORE, the petition is hereby DENIED and the appealed decision is AFFIRMED in toto.
SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Rollo, p. 159.

[2] Decision, pp. 1-2; Rollo, pp. 267-268.

[3] RTC Decision, p. 20; Record, p. 72.

[4] Decision, pp. 4-5, Rollo, pp. 271-272.

[5] Elayda vs. Court of Appeals, 199 SCRA 349 (1991); Medina vs. Asistio, 191 SCRA 218 (1990); Fernan vs. Court of Appeals, 181 SCRA 546 (1990).

[6] Coronado, et al. vs. Court of Appeals, 191 SCRA 814 (1990).

[7] CA Decision, pp. 7-8, Rollo, pp. 273-274.

[8] Prudential Bank vs. Court of Appeals, 223 SCRA 350 (1993); Pagsibigan vs. Court of Appeals, 221 SCRA 202 (1993); Legaspi Oil Co., Inc. vs. Court of Appeals, 224 SCRA 213 (1993); and Manuel vs. Court of Appeals, 227 SCRA 29 (1993).

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