

ROY NICOLAS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SIXTH DIVISION) AND BLESILO F.B. BUAN, RESPONDENTS.

G.R. No. 122857. March 27, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

The issue in this petition is whether the Court of Appeals committed reversible error in its decision[1] dated August 16, 1995 overturning the decision[2] dated May 31, 1993 of the Regional Trial Court of Pasig, Branch 165, by ordering the dismissal of petitioner's complaint against private respondent for lack of merit.

On February 19, 1987, petitioner Roy Nicolas and private respondent Blesito Buan entered into a Portfolio Management Agreement,[3] wherein the former was to manage the stock transactions of the latter for a period of three months with an automatic renewal clause. However, upon the initiative of the private respondent the agreement was terminated on August 19, 1987, and thereafter he requested for an accounting of all transactions made by the petitioner.

Three weeks after the termination of the agreement, petitioner demanded from the private respondent the amount of P68,263.67 representing his alleged management fees covering the periods of June 30, July 31 and August 19, 1987 as provided for in the Portfolio Management Agreement. But the demands went unheeded, much to the chagrin of the petitioner.

Rebuffed, petitioner filed a complaint[4] for collection of sum of money against the private respondent before the trial court. In his answer,[5] private respondent contended that petitioner mismanaged his transactions resulting in losses, thus, he was not entitled to any management fees.

After hearing, the trial court rendered its decision in favor of plaintiff, herein petitioner, thus:

"In View Of All The Foregoing, judgment is hereby rendered ordering the defendant to pay plaintiff as follows:

1. The amount of P68,263.67 for the management fees of plaintiff.
2. The amount of P8,000.00 as and for attorney's fees and expenses of litigation.
3. Costs of suit.

SO ORDERED."

Dismayed, private respondent appealed the decision to the Court of Appeals. Finding merit in his case, the appellate court reversed the trial court's finding and ruled against the petitioner, to wit:

"WHEREFORE, the appealed decision should be, as it is hereby REVERSED and SET ASIDE, and as a consequence thereof, appellee's complaint is hereby DISMISSED. No costs.

SO ORDERED."

Petitioner's motion for reconsideration was denied by the Court of Appeals on November 29, 1995.[6]

Due to the sudden reversal of events, petitioner is now before us assailing the Court of Appeals' ruling alleging that it misappreciated the evidence he presented before the trial court.

In reversing the trial court's decision, the Court of Appeals opined that:

"The lower court simply made a sweeping statement that the profits were generated by appellee's (Petitioner herein) transactions, making appellant (Private respondent herein) liable for the payment of the money demanded by appellee on the basis of self-serving profit and loss statements submitted as evidence by appellee. Other than these pieces of evidence, the trial court offered no satisfactory reason why the sum demanded by appellee be paid."

We affirm the ruling of the Court of Appeals.

Under the Portfolio Management Agreement, it was agreed that private respondent would pay the petitioner 20% of all realized profits every end of the month as his management fees. The exact wording of the provision reads:

"x x x x x x x x x

3. For his services, the INVESTOR agrees to pay the PORTFOLIO MANAGER 20% of all realized profits every end of the month."

Evidently, the key word in the provision is "profits." Simply put, profit has been defined as "the excess of return over expenditure in a transaction or series of transactions"[7] or the "series of an amount received over the amount paid for goods and services." [8]

To begin with, petitioner has the burden to prove that the transaction realized gains or profits to entitle him to said management fees, as provided in the Agreement. Accordingly, petitioner submitted the profit and loss statements[9] for the period of June 30, July 31 and August 19, 1987, showing a total profit of P341,318.34, of which 20% would represent his management fees amounting to P68,263.70.

For clarity these documents are reproduced hereunder:

"Profit & Loss Statement

of

Atty. Blesilo Buan

for the Period Ended June 30, 1987

Shares Issue Profit Loss

1,500 PLDT P 7,265.62

5,000 ATLAS 4,609.38

2,000 SMC 11,477.50

5,000 ATLAS 1,450.00

5,000 ATLAS 3,906.25

5,000,000 SEAFRONT 11,487.50

1,000 SMC 5,247.50

2,000 SMC 5,895.00

1,000 SMC 12,242.50

P 36,351.87 P 27,229.38

Trading Profit P 9,122.49

x .2

P 1,824.50[10]

- oOo -

Profit & Loss Statement

of

Atty. Blesilo Buan

for the Period Ended July 31, 1987

Shares Issue Profit Loss

22,300,000 BASIC P 222,963.75

400 PLDT 35,372.50

5,700 GLO 32,347.50

1,700 SMC 9,350.00

27,000 AC 16,216.87

P 306,900.62 P 9,350.00

Net Trading Profit P 297,550.62

x .2

----- P 59,510.12[11]

- oOo -

Profit & Loss Statement

of

Atty. Blesilo Buan

for the Period Ended August 19, 1987

Shares Issue Proceeds Cost Profit (Loss)

6,000 BENGUET P 754,560.00 706,440.00 P 48,120.00

5,000 GLO 189,131.25 202,606.02 (13,474.77)

Net Profit P 34,645.23

x .2

P 6,929.05[12]

In according no probative value to these documents, the Court of Appeals declared that:

“Exhibits ‘C’, ‘D’ and ‘E’ likewise cannot be relied upon to prove that profits were indeed realized. At most, these are self-serving evidence which do not carry much weight. There is no question that the profit and loss statements are relevant to the issue at hand. But as to whether or not these statements induce belief as to the existence or non-existence of profits generated by appellee, call for a minute examination of these documents. It should be emphasized that the fees being collected by appellee does not only spring from the rendition of services per se. The Portfolio Management Agreement requires that service fees be based on the profits realized out of the stock transactions of appellee in behalf of appellant. The profit and loss statements presented do not sufficiently prove the existence of such profits.

The mere fact that evidence is admissible does not necessarily mean that it is also credible (People vs. Agripa, 208 SCRA 589). The statements, covering the months of June, July and up to 19 August 1987, simply tabulate the number of shares acquired from each company, a column for profit and the last column for loss. The statements were not authenticated by an auditor, nor by the person who caused the preparation of the same.”[13]

The analysis of the evidence made by the Court of Appeals deserves our concurrence. A cursory reading of these purported profit and loss statements immediately raises doubts as to the veracity of the entries stated therein.

Admittedly, like any services rendered or performed, stock brokers are entitled to commercial fees or compensation pursuant to the Revised Securities Act Rule 19-13, which reads:

“RSA Rule 19-13. Charges for Services Performed.

Charges by brokers or dealers, if any, for service performed, including miscellaneous services such as collection of monies due for principal, dividends, interests, exchange or transfer of securities, appeals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.”[14]

Moreover, the same law provides that any fee or commission must be with due regard to relevant circumstances.[15]

Unfortunately, the profit and loss statements presented by the petitioner are nothing but bare assertions, devoid of any concrete basis or specifics as to the method of arriving at the amounts indicated in the documents. In fact, it did not even state when the stocks were purchased, the type of stocks (whether Class “A” or “B” or common or preferred) bought, when the stocks were sold, the acquisition and selling price of each stock, when the profits, if any, were delivered to the private respondent, the cost of safekeeping or custody of the stocks, as well as the taxes paid for each transaction. With respect to the alleged losses, it has been held that where a profit or loss statement shows a loss, the statement must show income and items of expense to explain the method of determining such loss.[16] However, in the instant petition, petitioner hardly elucidated the reasons and the factors behind the losses incurred in the course of the transactions.

In short, no evidentiary value can be attributed to the profit and loss statements submitted by the petitioner. These documents can hardly be considered a credible or true reflection of the transactions. It is an incomplete record yielding easily to the inclusion or deletion of certain matters. The contents are subject to suspicion since they are not reflective of all pertinent and relevant data. Thus, even assuming the admissibility of these alleged profit and loss statements, they are devoid of any evidentiary weight, for the amounts are conclusions without premises, its bases left to speculation, conjectures, assertions and guesswork.

As regards Exhibit “B,”[17] we quote with approval the Court of Appeals’ finding, thus:

“There is no question that appellant secured the services of appellee as portfolio manager, evidenced by the Portfolio Management Agreement (Exh. A). Pursuant to the Agreement, appellee entered into several transactions from 19 February 1987 up to 19 August 1987 or a period of six months. Thereafter, the agreement was not renewed by appellant. The ledger of accounts (Exhibit ‘B’) presented by appellee as proof of the transactions entered into only shows the following data: (1) dates in which the stocks were acquired; (2) classified the acquired stocks to be in long or short term trading; (3) the price of each stock; (4) which company’s stocks were acquired; and, (5) the total amount paid for each stock. It does not show how much profit was realized from each transaction.”

In sum, we find that petitioner has not proven the amounts indicated adequately. His testimony explaining the bases for the management fees demanded by him are nothing more than a self-serving exercise which lacks probative value. There were no credible documentary evidence (e.g. receipts of the transactions, order ticket, certificate of deposit; whether the stock certificates were deposited in a bank or professional custodian, and others) to support his claim that profits were indeed realized. At best, his assertions are founded on mere inferences and generalities. There must be more convincing proof which in this case is wanting.

To our mind, petitioner’s complaint is similar to an action for damages, wherein the general rule is that for the same to be recoverable it must not only be capable of proof but must actually be proved with a reasonable degree of certainty, and courts, in making the awards, must posit specific facts which could afford sufficient basis for measuring compensatory or actual damages.[18] Since petitioner could not present any credible evidence to substantiate his claims, the Court of Appeals was correct in ordering the dismissal of his complaint.

Lastly, the futility of petitioner’s action became more pronounced by the fact that he traded securities for the account of others without the necessary license from the Securities and Exchange Commission (SEC). Clearly, such omission was in violation of Section 19 of the Revised Securities Act which provides that no broker shall sell any securities unless he is registered with the SEC. The purpose of the statute requiring the registration of brokers selling securities and the filing of data regarding securities which they propose to sell, is to protect the public and strengthen the securities mechanism.[19]

American jurisprudence emphasizes the principle that:

“x x x, an unlicensed person may not recover compensation for services as a broker where a statute or ordinance requiring a license is applicable and such statute or ordinance is of a regulatory nature, was enacted in the exercise of the police power for the purpose of protecting the public, requires a license as evidence of qualification and fitness, and expressly precludes an unlicensed person from recovering compensation by suit, or at least manifests an intent to prohibit and render unlawful the transaction of business by an unlicensed person.”[20]

We see no reason not to apply the same rule in our jurisdiction. Stock market trading, a technical and highly specialized institution in the Philippines, must be entrusted to individuals with proven integrity, competence and knowledge, who have due regard to the requirements of the law.

WHEREFORE, in view of the foregoing, the assailed decision of the Court of Appeals dated August 16, 1995 as well as the Resolution dated November 29, 1995 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Rollo, pp. 40-47, penned by Associated Justice Antonio M. Martinez, with Associate Justice Consuelo Ynare-Santiago and Ruben Reyes, concurring.

[2] Ibid., pp. 70-76, penned by Judge Maritela A. Lagaspi.

[3] Ibid., p. 51.

[4] Ibid., pp. 62-64.

[5] Ibid., pp. 65-69.

[6] Ibid., p. 50.

[7] Webster's Third New International Dictionary, Unabridged, 1986.

[8] Barron's Law Dictionary, 1991.

[9] Rollo, pp. 56-58, Exhibits "C," "D," and "E."

[10] The actual amount is P1,824.498.

[11] The actual amount is P59,510.124.

[12] The actual amount is P6,929.046.

[13] Ibid., p. 45.

[14] Securities and Exchange Commission, Business Conduct Rules.

[15] Rule 35-1, *ibid.*

[16] 69 Am Jur 2d Securities Regulation Sec. 1166.

[17] Rollo, pp. 52-55.

[18] *Del Mundo v. Court of Appeals*, 240 SCRA 348 (1995); *Baliwag Transit Inc. v. Court of Appeals*, 256 SCRA 746 (1996).

[19] Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, 1984 Edition; *Securities and Exchange Commission v. Court of Appeals*, 246 SCRA 738 (1995); Martin, *Commentaries and Jurisprudence on Philippine Commercial Laws*, Vol. 4, 1986.

[20] 12 C.J.S. Sec. 67.

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