MARUBENI CORPORATION, RYOICHI TANAKA, RYOHEI KIMURA AND SHOICHI ONE, PETITIONERS, VS. FELIX LIRAG, RESPONDENT.

G.R. No. 130998. August 10, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal via certiorari to annul and set aside the decision[1] of the Court of Appeals finding petitioners Ryoichi Tanaka, Ryohei Kimura and Shoichi One, as officers of petitioner Marubeni Corporation, jointly and severally liable with the corporation for the commission claimed by respondent Felix Lirag in the amount of six million (P6,000,000.00) pesos arising from an oral consultancy agreement.

Petitioner Marubeni Corporation (hereafter, Marubeni) is a foreign corporation organized and existing under the laws of Japan. It was doing business in the Philippines through its duly licensed, wholly owned subsidiary, Marubeni Philippines Corporation. Petitioners Ryoichi Tanaka, Ryohei Kimura and Shoichi One were officers of Marubeni assigned to its Philippine branch.[2]

On January 27, 1989, respondent Felix Lirag filed with the Regional Trial Court, Makati a complaint[3] for specific performance and damages claiming that petitioners owed him the sum of P6,000,000.00 representing commission pursuant to an oral consultancy agreement with Marubeni. Lirag claimed that on February 2, 1987, petitioner Ryohei Kimura hired his consultancy group for the purpose of obtaining government contracts of various projects. Petitioner Kimura authorized him to work on the following projects: (1) National Telephone Project, (2) Regional Telecommunications Project; (3) Cargo Handling Equipment; (4) Maritime Communications; (5) Philippine National Railways Depot; and (6) Bureau of Posts (Phase II).[4] Petitioners promised to pay him six percent (6%) consultancy fee based on the total costs of the projects obtained.

The consultancy agreement was not reduced into writing because of the mutual trust between Marubeni and the Lirag family.[5] Their close business and personal relationship dates back to 1960, when respondent's family was engaged in the textile fabric manufacturing business, in which Marubeni supplied the needed machinery, equipment, spare parts and raw materials.[6]

In compliance with the agreement, respondent Lirag made representations with various government officials, arranged for meetings and conferences, relayed pertinent information as well as submitted feasibility studies and project proposals, including pertinent documents required by petitioners. As petitioners had been impressed with respondent's performance, six (6) additional projects were given to his group under the same undertaking.[7]

One of the projects handled by respondent Lirag, the Bureau of Post project, amounting to P100,000,000.00 was awarded to the "Marubeni-Sanritsu tandem."[8] Despite respondent's repeated formal verbal demands for payment of the agreed consultancy fee, petitioners did not pay. In response to the first demand letter, petitioners promised to reply within fifteen (15) days, but they did not do so.

Pursuant to the consultancy agreement, respondent claimed a commission of six percent (6%) of the total contract

price, or a total of P6,000,000.00, or in the alternative, that he be paid the same amount by way of damages or as the reasonable value of the services he rendered to petitioners, and further claimed twenty percent (20%) of the amount recoverable as attorney's fees and the costs of suit.

In their answer, petitioners denied the consultancy agreement. Petitioner Ryohei Kimura did not have the authority to enter into such agreement in behalf of Marubeni. Only Mr. Morihiko Maruyama, the general manager, upon issuance of a special power of attorney by the principal office in Tokyo, Japan, could enter into any contract in behalf of the corporation. Mr. Maruyama did not discuss with respondent Lirag any of the matters alleged in the complaint, nor agreed to the payment of commission. Moreover, Marubeni did not participate in the bidding for the Bureau of Post project, nor benefited from the supposed project. Thus, petitioners moved for the dismissal of the complaint.

Petitioner Shoichi One submitted a separate answer raising similar arguments.

With regard to petitioner Ryohei Kimura, the trial court did not acquire jurisdiction over his person because he was recalled to the principal office in Tokyo, Japan before the complaint and the summons could be served on him.

During the pre-trial conferences held on September 18 and October 16, 1989 and on January 24, March 15 and May 17, 1990, no amicable settlement was reached. Trial on the merits ensued.

On April 29, 1993, the trial court promulgated a decision and ruled that respondent is entitled to a commission. Respondent was led to believe that there existed an oral consultancy agreement. Hence, he performed his part of the agreement and helped petitioners get the project. The dispositive portion of the decision reads:

> "WHEREFORE, defendants are ordered, jointly and severally, to pay to the plaintiff: (1) the amount of P6,000,000.00, with interest at the legal rate (12% per annum) from January 10, 1989 until fully paid; (2) 20% of this amount to serve as reimbursement of plaintiff's attorney's fees; and (3) to pay the cost of the suit.
>
> "SO ORDERED.
>
> "Makati, Metro Manila, April 29, 1993.
>
> "[Original Signed]
> "SALVADOR P. DE GUZMAN, Jr.
> "Pairing Judge"[9]

On May 26, 1993, petitioners interposed an appeal from the decision to the Court of Appeals.[10]

After due proceedings, on October 9, 1997, the Court of Appeals promulgated a decision affirming the decision of the trial court. The Court of Appeals ruled that preponderance of evidence favored the existence of a consultancy agreement between the parties. It upheld the factual findings of the trial court, thus:

> "Plaintiff's evidence details the efforts he exerted after having been extended an appointment by Marubeni as its consultant. He tendered a thanksgiving dinner for the defendants at the Nandau Restaurant; he and Napoleon Rama visited Marubeni's Morihiko Maruyama in the latter's office during which they discussed the BOP II project. He arranged several conferences between the Marubeni officials and Postmaster General Angelito Banayo. In one meeting which took place in the office of Mr. Banayo at Liwasang Bonifacio, a Mr. Ida, the General Manager of Sanritsu, was conspicuously present. Mr. Banayo testified that Mr. Ida told him that Sanritsu was representing Marubeni in the BOP II project (tsn., 6/11/90, pp. 15-17; 5/15/91, pp. 10-12). At least thirty (30) conferences between plaintiff and defendants took place at the Marubeni offices, lasting at least two hours each meeting. Eventually, the bid was awarded by the Bureau of Post to Sanritsu. Aware that Sanritsu represented Marubeni, and in fact Marubeni assigned Sanritsu to enter its bid, plaintiff sent his bill for

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> his services to the defendants in a letter dated April 20, 1988. This was followed by a letter dated September 26, 1990 of plaintiff's counsel. This time Mr. Tanaka asked for 15 days within which to contact their Head Office to seek instructions."[11]

The Court of Appeals relied on the doctrine of admission by silence[12] in upholding the existence of a consultancy agreement, noting that petitioner Tanaka's reaction to respondent's September 26, 1988 demand letter was not consistent with their claim that there was no consultancy agreement. On the contrary, it lent credence to respondent's claim that they had an existing consultancy agreement. Petitioner Tanaka's response dated October 13, 1988 to the demand letter of September 26, 1988 reads:

> "Referring to your letter dated September 26, 1988, we are pleased to inform you that the issue is currently being reviewed by us and we would like to reply to you within fifteen (15) days."[13]

The Court of Appeals observed that if indeed there were no consultancy agreement, it would have been easy for petitioners to simply deny respondent's claim. Yet, they did not do so. The conglomeration of these circumstances bolstered the existence of the oral consultancy agreement. The dispositive portion of the decision reads:

> "WHEREFORE, the decision appealed from is hereby AFFIRMED."[14]

Hence, this appeal.[15]

In this appeal, petitioners raise the following issues: (1) whether or not there was a consultancy agreement between petitioners and respondent; and corollary to this, (2) whether or not respondent is entitled to receive a commission if there was, in fact, a consultancy agreement.[16]

We find the appeal meritorious.

In deciding this appeal, we rely on the rule that a party who has the burden of proof in a civil case must establish his case by a preponderance of evidence.[17] When the evidence of the parties is in equipoise, or when there is a doubt as to where the preponderance of evidence lies, the party with the burden of proof fails and the petition must thus be denied.[18]

As a general rule, factual findings of the Court of Appeals are conclusive on the parties and are not reviewed by the Supreme Court—and they carry even more weight when the Court of Appeals affirmed the factual findings of the trial court. It is not the function of the Supreme Court to weigh anew the evidence passed upon by the Court of Appeals.[19] Moreover, only questions of law may be raised before the Supreme Court in a petition for review under Rule 45 of the Revised Rules of Court.[20]

However, the rule is subject to exceptions,[21] such as when the conclusion is grounded on speculations, surmises, or conjectures,[22] as in the instant case.

An assiduous scrutiny of the testimonial and documentary evidence extant leads us to the conclusion that the evidence could not support a solid conclusion that a consultancy agreement, oral or written, was agreed between petitioners and respondent. Respondent attempted to fortify his own testimony by presenting several corroborative witnesses. However, what was apparent in the testimonies of these witnesses was the fact that they learned about the existence of the consultancy agreement only because that was what respondent told them.[23]

In civil cases, he who alleges a fact has the burden of proving it; a mere allegation is not evidence.[24] He must establish his cause by a preponderance of evidence,[25] which respondent failed to establish in the instant case.

Assuming for the sake of argument that an oral consultancy agreement has been perfected between the parties,

respondent Lirag could not still claim fees on the project that has not been awarded to Marubeni.

If respondent's contentions were to be taken as truth, he would be entitled to 6% consulting fee based on the total cost of the projects obtained,[26] or on success basis.[27] However, even respondent admitted that the Bureau of Post project was not awarded to Marubeni, but to Sanritsu.[28] Marubeni did not even join the bidding for the Bureau of Post project.

Respondent could not claim from Sanritsu because of the absence of any agreement between him and the latter. When asked to clarify whether he has an existing consultancy agreement with Sanritsu, respondent answered in the negative, thus:

> "COURT:
>
> One clarificatory question-
>
> Do you have any consultancy service contract with Marubeni/San Ritsu – do you have?
>
> A: No, sir. I have only Consultancy Agreement on verbal basis with Marubeni."[29]

Hence, how could he be entitled to the 6% commission, when it was not his client who won in the bidding?

Respondent tried to justify his commission of roughly about P6,000,000.00 in the guise that Marubeni and Sanritsu are sister corporations, thereby implying the need to pierce the veil of corporate fiction. Respondent claimed that Marubeni as the supplier and real contractor of the project hired and sub-contracted the project to Sanritsu.

We believe that this line of reasoning is too far-fetched. Not because two foreign companies came from the same country and closely worked together on certain projects would the conclusion arise that one was the conduit of the other, thus piercing the veil of corporate fiction.

To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. It cannot be presumed. The separate personality of the corporation may be disregarded only when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary for the protection of creditors.[30] We could not just rely on respondent's testimony regarding the existence of the "Marubeni-Sanritsu tandem" to justify his claim for payment of commission. This conclusion is too conjectural to be believed.

Aside from the self-serving testimony of respondent regarding the existence of a close working relationship between Marubeni and Sanritsu, there was nothing that would support the conclusion that Sanritsu was an agent of Marubeni. Mr. Lito Banayo, whom respondent presented to corroborate his testimony on this particular issue said, thus:

> "ATTY. VALERO
>
> My question is- do you know for a fact whether the impression you have about Japanese Trading Firm working through Agents was the relationship between Marubeni and San Ritsu when Mr. Iida said that they were working together?
>
> "A: I did not know for a fact because I did not see any contract between Marubeni and San Ritsu presented to me."[31]

Contrary to the trial court's finding that petitioners led respondent to believe that they hired respondent's services as consultant, the evidence proved otherwise. Petitioner Shoichi One, one of the officers of Marubeni Phils.,

testified that at the onset, Marubeni Phils. informed respondent that it had no authority to commit to anything, as it all depended on the decision of the principal headquarters in Tokyo, Japan. However, respondent Lirag insisted on providing assistance to Marubeni to get coveted government contracts because Marubeni might encounter difficulties due to discrimination from the government.[32] Despite such knowledge, respondent said that "it's alright" with him as he "believes Marubeni was an old time friend so he wanted to work for those projects."[33] Hence, how could petitioners be guilty of misleading respondent on the acceptance of the latter's offer of consultancy service?

With regard to the Court of Appeal's ratiocination that petitioner Tanaka's response dated October 13, 1988 to the demand letter of September 26, 1988, amounted to an implied admission of the consultancy agreement, the records showed that, to the contrary, this fact strengthened petitioners' allegation that Marubeni Phils. lacked the requisite authority to enter into any binding agreement.

As explained by petitioner Shoichi One, Marubeni Phils. could enter into a consultancy agreement only after submitting a recommendation to the principal headquarters in Tokyo, Japan. If the office in Tokyo, Japan agrees to hire consultants, it would then give a power of attorney to its general manager in Manila authorizing the latter to enter into such agreement.

In the instant case, the parties did not reach the second stage as the headquarters in Tokyo, Japan did not see it fit to hire a consultant as they decided not to participate in the bidding. Hence, no consultancy agreement was perfected, whether oral or written. There was no absolute acceptance of respondent's offer of consultancy services.

Assuming arguendo that the petitioner accepted respondent's offer of consultancy services, we could not give legal imprimatur to the agreement. The service rendered by respondent contemplated the exploitation of personal influence and solicitation on a public officer.

Respondent said that petitioners sought out his services because they "needed somebody who can help them 'penetrate' and establish goodwill" with the government.[34] Petitioners found it difficult to arrange a meeting with Postmaster General Angelito Banayo because of petitioners' reputation of engaging in questionable transactions.[35] Suddenly, through the intervention of respondent, the postmaster general became accessible to petitioners. This became possible because of respondent's close personal relationship with the postmaster general, his trusted and long-time friend.[36] Respondent testified, to wit:

> "Q: In other words you are saying that Marubeni and San Ritsu representatives had a conference with the Post Master General Banayo in connection with this Project?
>
> "A: Yes and I was the one who made the arrangement."[37]

In another instance, respondent said, thus:

> "WITNESS:
>
> What we have done by that... first, Mr. Banayo went to Tokyo and when he was in Tokyo we were able to arrange the Marubeni representative in Tokyo to meet and talk with Mr. Banayo in Tokyo...
>
> "COURT:
>
> Mr...?
>
> "A. ...Banayo, the Post Master General and representatives of Marubeni in Tokyo - this was done because of my intervention."[38]

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Any agreement entered into because of the actual or supposed influence which the party has, engaging him to influence executive officials in the discharge of their duties, which contemplates the use of personal influence and solicitation rather than an appeal to the judgment of the official on the merits of the object sought is contrary to public policy.[39] Consequently, the agreement, assuming that the parties agreed to the consultancy, is null and void as against public policy.[40] Therefore, it is unenforceable before a court of justice.[41]

In light of the foregoing, we rule that the preponderance of evidence established no consultancy agreement between petitioners and respondent from which the latter could anchor his claim for a six percent (6%) consultancy fee on a project that was not awarded to petitioners.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals[42] is hereby SET ASIDE. Civil Case No. 89-3037 filed before the Regional Trial Court, Branch 143, Makati City is hereby DISMISSED.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In CA-G.R. CV No. 45873, promulgated on October 9, 1997, Verzola, J., ponente, Ibay-Somera and Demetria, JJ., concurring.; Rollo, pp. 30-39.

[2] Now closed.

[3] Docketed as Civil Case No. 89-3037; Petition for Review, Annex “D”, Rollo, pp. 46-51.

[4] Complaint, Regional Trial Court Records, pp. 1-6, at p. 2.

[5] TSN, May 21, 1990, p. 38.

[6] Ibid., pp. 24-29.

[7] The additional projects were as follows: (A) JICA PROJECTS - (1) Soil Research Laboratory; (2) Learning Resource Center; (3) Provincial Hospitals; and (4) Hydrographic & Oceangraphic Slip; (B) OECF PROJECTS - (1) Metro Manila Pumping Station/ Flood Control; and (2) Metro Manila Traffic.; Complaint, Regional Trial Court Records, at p. 3; Rollo, p. 48.

[8] TSN, May 21, 1990, p. 42.

[9] Rollo, p. 118.

[10] Rollo, p. 119.

[11] Court of Appeals Decision, Rollo, pp. 34-35.

[12] Rule 130, Section 23. Admission by silence.- Any act or declaration made in the presence and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him.

[13] Court of Appeals Decision, Rollo, p. 36.

[14] TSN, May 21, 1990, p. 61; Court of Appeals Decision, Rollo, p. 38.

[15] Petitioner’s Memorandum, Rollo, pp. 310-332, at pp. 312-313; On October 21, 1998, the Court gave due

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course to the petition, Rollo, p. 274.

[16] Petition for Review, filed on December 1, 1997, Rollo, pp. 8-24.

[17] Rivera v. Court of Appeals, 348 Phil. 734, 742 [1998].

[18] Ibid., p. 743.

[19] Gold Loop Properties, Inc. v. Court of Appeals, 306 SCRA 639, 652 [1999].

[20] Tinio v. Manzano, 307 SCRA 460, 469 [1999].

[21] In Sta. Maria v. Court of Appeals, 285 SCRA 351 [1998], the Court enumerated some of the instances when the factual findings of the Court of Appeals are not deemed conclusive, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

[22] Castilex Industrial Corporation v. Vasquez, Jr., 321 SCRA 393, 403 [1999].

[23] TSN, May 28, 1990, p. 125; TSN, June 4, 1990, p. 7; TSN, June 11, 1990, pp. 202-203.

[24] Luxuria Homes, Inc. v. Court of Appeals, 302 SCRA 315, 325 [1999].

[25] Ceremonia v. Court of Appeals, 314 SCRA 731, 736 [1999].

[26] Complaint, Regional Trial Records, p. 2.

[27] TSN, July 6, 1990, p. 290.

[28] TSN, May 21, 1990, p. 64.

[29] TSN, May 21, 1990, pp. 45-46.

[30] Luxuria Homes, Inc. v. Court of Appeals, supra, Note 22, 328-329 [1999].

[31] TSN, June 11, 1990, p. 209.

[32] TSN, July 6, 1990, p. 279.

[33] TSN, July 6, 1990, p. 281.

[34] Annex "F," Petition for Review, p. 62.

[35] Annex "F," Petition for Review, p. 63.

[36] Annex "F," Petition for Review, p. 58.

[37] TSN, May 21, 1990, pp. 67-68.

[38] TSN, May 21, 1990, p. 33.

[39] International Harvester Macleod, Inc. v. Court of Appeals, 90 SCRA 512, 522 [1979].

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[40] Tee v. Tacloban Electric and Ice Plant Co, Inc., 105 Phil. 168 [1959].

[41] International Harvester Macleod, Inc. v. Court of Appeals, supra, Note 37, at p. 523.

[42] In CA-G. R. CV No. 45873.

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