FERNANDO SANTOS, PETITIONER, VS. SPOUSES ARSENIO AND NIEVES REYES, RESPONDENTS.

G.R. No. 135813. October 25, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

As a general rule, the factual findings of the Court of Appeals affirming those of the trial court are binding on the Supreme Court. However, there are several exceptions to this principle. In the present case, we find occasion to apply both the rule and one of the exceptions.

The Case

Before us is a Petition for Review on Certiorari assailing the November 28, 1997 Decision,[1] as well as the August 17, 1998 and the October 9, 1998 Resolutions,[2] issued by the Court of Appeals (CA) in CA-GR CV No. 34742. The Assailed Decision disposed as follows:

> "WHEREFORE, the decision appealed from is AFFIRMED save as for the counterclaim which is hereby DISMISSED. Costs against [petitioner]."[3]

Resolving respondent's Motion for Reconsideration, the August 17, 1998 Resolution ruled as follows:

> "WHEREFORE, [respondents'] motion for reconsideration is GRANTED. Accordingly, the court's decision dated November 28, 1997 is hereby MODIFIED in that the decision appealed from is AFFIRMED in toto, with costs against [petitioner]."[4]

The October 9, 1998 Resolution denied "for lack of merit" petitioner's Motion for Reconsideration of the August 17, 1998 Resolution.[5]

The Facts

The events that led to this case are summarized by the CA as follows:

> "Sometime in June, 1986, [Petitioner] Fernando Santos and [Respondent] Nieves Reyes were introduced to each other by one Meliton Zabat regarding a lending business venture proposed by Nieves. It was verbally agreed that [petitioner would] act as financier while [Nieves] and Zabat [would] take charge of solicitation of members and collection of loan payments. The venture was launched on June 13, 1986, with the understanding that [petitioner] would receive 70% of the profits while x x x Nieves and Zabat would earn 15% each.
>
> "In July, 1986, x x x Nieves introduced Cesar Gragera to [petitioner]. Gragera, as chairman of the Monte Maria Development Corporation[6] (Monte Maria, for brevity), sought short-term loans for members of the corporation. [Petitioner] and Gragera executed an agreement providing funds for Monte Maria's members. Under the agreement, Monte Maria, represented by Gragera, was entitled to P1.31 commission per thousand paid daily to [petitioner] (Exh. `A'). x x x Nieves kept the books as representative of [petitioner] while [Respondent] Arsenio, husband of Nieves, acted as credit investigator.

"On August 6, 1986, [petitioner], x x x [Nieves] and Zabat executed the `Article of Agreement' which formalized their earlier verbal arrangement.

"[Petitioner] and [Nieves] later discovered that their partner Zabat engaged in the same lending business in competition with their partnership[.] Zabat was thereby expelled from the partnership. The operations with Monte Maria continued.

"On June 5, 1987, [petitioner] filed a complaint for recovery of sum of money and damages. [Petitioner] charged [respondents], allegedly in their capacities as employees of [petitioner], with having misappropriated funds intended for Gragera for the period July 8, 1986 up to March 31, 1987. Upon Gragera's complaint that his commissions were inadequately remitted, [petitioner] entrusted P200,000.00 to x x x Nieves to be given to Gragera. x x x Nieves allegedly failed to account for the amount. [Petitioner] asserted that after examination of the records, he found that of the total amount of P4,623,201.90 entrusted to [respondents], only P3,068,133.20 was remitted to Gragera, thereby leaving the balance of P1,555,065.70 unaccounted for.

"In their answer, [respondents] asserted that they were partners and not mere employees of [petitioner]. The complaint, they alleged, was filed to preempt and prevent them from claiming their rightful share to the profits of the partnership.

"x x x Arsenio alleged that he was enticed by [petitioner] to take the place of Zabat after [petitioner] learned of Zabat's activities. Arsenio resigned from his job at the Asian Development Bank to join the partnership.

"For her part, x x x Nieves claimed that she participated in the business as a partner, as the lending activity with Monte Maria originated from her initiative. Except for the limited period of July 8, 1986 through August 20, 1986, she did not handle sums intended for Gragera. Collections were turned over to Gragera because he guaranteed 100% payment of all sums loaned by Monte Maria. Entries she made on worksheets were based on this assumptive 100% collection of all loans. The loan releases were made less Gragera's agreed commission. Because of this arrangement, she neither received payments from borrowers nor remitted any amount to Gragera. Her job was merely to make worksheets (Exhs. `15' to `15-DDDDDDDDDD') to convey to [petitioner] how much he would earn if all the sums guaranteed by Gragera were collected.

"[Petitioner] on the other hand insisted that [respondents] were his mere employees and not partners with respect to the agreement with Gragera. He claimed that after he discovered Zabat's activities, he ceased infusing funds, thereby causing the extinguishment of the partnership. The agreement with Gragera was a distinct partnership [from] that of [respondent] and Zabat. [Petitioner] asserted that [respondents] were hired as salaried employees with respect to the partnership between [petitioner] and Gragera.

"[Petitioner] further asserted that in Nieves' capacity as bookkeeper, she received all payments from which Nieves deducted Gragera's commission. The commission would then be remitted to Gragera. She likewise determined loan releases.

"During the pre-trial, the parties narrowed the issues to the following points: whether [respondents] were employees or partners of [petitioner], whether [petitioner] entrusted money to [respondents] for delivery to Gragera, whether the P1,555,068.70 claimed under the complaint was actually remitted to Gragera and whether [respondents] were entitled to their counterclaim for share in the profits."[7]

Ruling of the Trial Court

In its August 13, 1991 Decision, the trial court held that respondents were partners, not mere employees, of petitioner. It further ruled that Gragera was only a commission agent of petitioner, not his partner. Petitioner moreover failed to prove that he had entrusted any money to Nieves. Thus, respondents' counterclaim for their share in the partnership and for damages was granted. The trial court disposed as follows:

"39. WHEREFORE, the Court hereby renders judgment as follows:

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39.1. THE SECOND AMENDED COMPLAINT dated July 26, 1989 is DISMISSED.

39.2. The [Petitioner] FERNANDO J. SANTOS is ordered to pay the [Respondent] NIEVES S. REYES, the following:

39.2.1.

P3,064,428.00

-

The 15 percent share of the [respondent] NIEVES S. REYES in the profits of her joint venture with the [petitioner].

39.2.2

. Six (6) percent of P3,064,428.00

-

As damages from August 3, 1987 until the P3,064,428.00 is fully paid.

39.2.3.

P50,000.00

-

As moral damages

39.2.4.

P10,000.00

-

As exemplary damages

39.3. The [petitioner] FERNANDO J. SANTOS is ordered to pay the [respondent] ARSENIO REYES, the following:

39.3.1

. P2,899,739.50

-

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The balance of the 15 percent share of the [respondent] ARSENIO REYES in the profits of his joint venture with the [petitioner].

39.3.2.

Six (6) percent of

-

As damages from P2,899,739.50 August 3, 1987 until the P2,899,739.50 is fully paid.

39.3.3.

P25,000.00

-

As moral damages

39.3.4.

P10,000.00

-

As exemplary damages

39.4. The [petitioner] FERNANDO J. SANTOS is ordered to pay the [respondents]:

39.4.1.

P50,000.00

-

As attorney's fees; and

39.4.2

The cost of the suit."[8]

Ruling of the Court of Appeals

On appeal, the Decision of the trial court was upheld, and the counterclaim of respondents was dismissed. Upon the latter's Motion for Reconsideration, however, the trial court's Decision was reinstated in toto. Subsequently, petitioner's own Motion for Reconsideration was denied in the CA Resolution of October 9, 1998.

The CA ruled that the following circumstances indicated the existence of a partnership among the parties: (1) it

was Nieves who broached to petitioner the idea of starting a money-lending business and introduced him to Gragera; (2) Arsenio received "dividends" or "profit-shares" covering the period July 15 to August 7, 1986 (Exh. "6"); and (3) the partnership contract was executed after the Agreement with Gragera and petitioner and thus showed the parties' intention to consider it as a transaction of the partnership. In their common venture, petitioner invested capital while respondents contributed industry or services, with the intention of sharing in the profits of the business.

The CA disbelieved petitioner's claim that Nieves had misappropriated a total of P200,000 which was supposed to be delivered to Gragera to cover unpaid commissions. It was his task to collect the amounts due, while hers was merely to prepare the daily cash flow reports (Exhs. "15-15DDDDDDDDDD") to keep track of his collections.

Hence, this Petition.[9]

Issue

Petitioner asks this Court to rule on the following issues:[10]

"Whether or not Respondent Court of Appeals acted with grave abuse of discretion tantamount to excess or lack of jurisdiction in:

- Holding that private respondents were partners/joint venturers and not employees of Santos in connection with the agreement between Santos and Monte Maria/Gragera;

- Affirming the findings of the trial court that the phrase `Received by' on documents signed by Nieves Reyes signified receipt of copies of the documents and not of the sums shown thereon;

- Affirming that the signature of Nieves Reyes on Exhibit `E' was a forgery;

- Finding that Exhibit `H' [did] not establish receipt by Nieves Reyes of P200,000.00 for delivery to Gragera;

- Affirming the dismissal of Santos' [Second] Amended Complaint;

- Affirming the decision of the trial court, upholding private respondents' counterclaim;

- Denying Santos' motion for reconsideration dated September 11, 1998."

Succinctly put, the following were the issues raised by petitioner: (1) whether the parties' relationship was one of partnership or of employer-employee; (2) whether Nieves misappropriated the sums of money allegedly entrusted to her for delivery to Gragera as his commissions; and (3) whether respondents were entitled to the partnership profits as determined by the trial court.

The Court's Ruling

The Petition is partly meritorious.

First Issue:Business Relationship

Petitioner maintains that he employed the services of respondent spouses in the money-lending venture with Gragera, with Nieves as bookkeeper and Arsenio as credit investigator. That Nieves introduced Gragera to Santos did not make her a partner. She was only a witness to the Agreement between the two. Separate from the partnership between petitioner and Gragera was that which existed among petitioner, Nieves and Zabat, a partnership that was dissolved when Zabat was expelled.

On the other hand, both the CA and the trial court rejected petitioner's contentions and ruled that the business relationship was one of partnership. We quote from the CA Decision, as follows:

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> "[Respondents] were industrial partners of [petitioner]. x x x Nieves herself provided the initiative in the lending activities with Monte Maria. In consonance with the agreement between appellant, Nieves and Zabat (later replaced by Arsenio), [respondents] contributed industry to the common fund with the intention of sharing in the profits of the partnership. [Respondents] provided services without which the partnership would not have [had] the wherewithal to carry on the purpose for which it was organized and as such [were] considered industrial partners (Evangelista v. Abad Santos, 51 SCRA 416 [1973]).
>
> "While concededly, the partnership between [petitioner,] Nieves and Zabat was technically dissolved by the expulsion of Zabat therefrom, the remaining partners simply continued the business of the partnership without undergoing the procedure relative to dissolution. Instead, they invited Arsenio to participate as a partner in their operations. There was therefore, no intent to dissolve the earlier partnership. The partnership between [petitioner,] Nieves and Arsenio simply took over and continued the business of the former partnership with Zabat, one of the incidents of which was the lending operations with Monte Maria.
>
> x x x x x x x x x
>
> "Gragera and [petitioner] were not partners. The money-lending activities undertaken with Monte Maria was done in pursuit of the business for which the partnership between [petitioner], Nieves and Zabat (later Arsenio) was organized. Gragera who represented Monte Maria was merely paid commissions in exchange for the collection of loans. The commissions were fixed on gross returns, regardless of the expenses incurred in the operation of the business. The sharing of gross returns does not in itself establish a partnership."[11]

We agree with both courts on this point. By the contract of partnership, two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves.[12] The "Articles of Agreement" stipulated that the signatories shall share the profits of the business in a 70-15-15 manner, with petitioner getting the lion's share.[13] This stipulation clearly proved the establishment of a partnership.

We find no cogent reason to disagree with the lower courts that the partnership continued lending money to the members of the Monte Maria Community Development Group, Inc., which later on changed its business name to Private Association for Community Development, Inc. (PACDI). Nieves was not merely petitioner's employee. She discharged her bookkeeping duties in accordance with paragraphs 2 and 3 of the Agreement, which states as follows:

> "2. That the SECOND PARTY and THIRD PARTY shall handle the solicitation and screening of prospective borrowers, and shall x x x each be responsible in handling the collection of the loan payments of the borrowers that they each solicited.
>
> "3. That the bookkeeping and daily balancing of account of the business operation shall be handled by the SECOND PARTY."[14]

The "Second Party" named in the Agreement was none other than Nieves Reyes. On the other hand, Arsenio's duties as credit investigator are subsumed under the phrase "screening of prospective borrowers." Because of this Agreement and the disbursement of monthly "allowances" and "profit shares" or "dividends" (Exh. "6") to Arsenio, we uphold the factual finding of both courts that he replaced Zabat in the partnership.

Indeed, the partnership was established to engage in a money-lending business, despite the fact that it was formalized only after the Memorandum of Agreement had been signed by petitioner and Gragera. Contrary to petitioner's contention, there is no evidence to show that a different business venture is referred to in this Agreement, which was executed on August 6, 1986, or about a month after the Memorandum had been signed by petitioner and Gragera on July 14, 1986. The Agreement itself attests to this fact:

> "WHEREAS, the parties have decided to formalize the terms of their business relationship in order that their respective interests may be properly defined and established for their mutual benefit and understanding."[15]

Second Issue:

No Proof of Misappropriation of

Gragera's Unpaid Commission

Petitioner faults the CA finding that Nieves did not misappropriate money intended for Gragera's commission. According to him, Gragera remitted his daily collection to Nieves. This is shown by Exhibit "B" (the "Schedule of Daily Payments"), which bears her signature under the words "received by." For the period July 1986 to March 1987, Gragera should have earned a total commission of P4,282,429.30. However, only P3,068,133.20 was received by him. Thus, petitioner infers that she misappropriated the difference of P1,214,296.10, which represented the unpaid commissions. Exhibit "H" is an untitled tabulation which, according to him, shows that Gragera was also entitled to a commission of P200,000, an amount that was never delivered by Nieves.[16]

On this point, the CA ruled that Exhibits "B," "F," "E" and "H" did not show that Nieves received for delivery to Gragera any amount from which the P1,214,296.10 unpaid commission was supposed to come, and that such exhibits were insufficient proof that she had embezzled P200,000. Said the CA:

> "The presentation of Exhibit "D" vaguely denominated as `members ledger' does not clearly establish that Nieves received amounts from Monte Maria's members. The document does not clearly state what amounts the entries thereon represent. More importantly, Nieves made the entries for the limited period of January 11, 1987 to February 17, 1987 only while the rest were made by Gragera's own staff.
>
> "Neither can we give probative value to Exhibit `E' which allegedly shows acknowledgment of the remittance of commissions to Verona Gonzales. The document is a private one and its due execution and authenticity have not been duly proved as required in [S]ection 20, Rule 132 of the Rules of Court which states:
>
> `Sec. 20. Proof of Private Document - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.

`Any other private document need only be identified as that which it is claimed to be.'

"The court a quo even ruled that the signature thereon was a forgery, as it found that:

> `x x x. But NIEVES denied that Exh. E-1 is her signature; she claimed that it is a forgery. The initial stroke of Exh. E-1 starts from up and goes downward. The initial stroke of the genuine signatures of NIEVES (Exhs. A-3, B-1, F-1, among others) starts from below and goes upward. This difference in the start of the initial stroke of the signatures Exhs. E-1 and of the genuine signatures lends credence to Nieves' claim that the signature Exh. E-1 is a forgery.'

x x x x x x x x x

"Nieves' testimony that the schedules of daily payment (Exhs. `B' and `F') were based on the predetermined 100% collection as guaranteed by Gragera is credible and clearly in accord with the evidence. A perusal of Exhs. "B" and "F" as well as Exhs. `15' to 15-DDDDDDDDDD' reveal that the entries were indeed based on the 100% assumptive collection guaranteed by Gragera. Thus, the total amount recorded on Exh. `B' is exactly the number of borrowers multiplied by the projected collection of P150.00 per borrower. This holds true for Exh. `F.'

"Corollarily, Nieves' explanation that the documents were pro forma and that she signed them not to signify that she collected the amounts but that she received the documents themselves is more believable than [petitioner's] assertion that she actually handled the amounts.

"Contrary to [petitioner's] assertion, Exhibit `H' does not unequivocally establish that x x x Nieves received P200,000.00 as commission for Gragera. As correctly stated by the court a quo, the document showed a liquidation of P240,000.00 and not P200,000.00.

"Accordingly, we find Nieves' testimony that after August 20, 1986, all collections were made by Gragera believable and worthy of credence. Since Gragera guaranteed a daily 100% payment of the loans, he took charge of the collections. As [petitioner's] representative, Nieves merely prepared the daily cash flow reports (Exh. `15' to '15 DDDDDDDDDD') to enable [petitioner] to keep track of Gragera's operations. Gragera on the other hand devised the schedule of daily payment (Exhs. `B' and `F') to record the projected gross daily collections.

"As aptly observed by the court a quo:

> `26.1. As between the versions of SANTOS and NIEVES on how the commissions of GRAGERA [were] paid to him[,] that of NIEVES is more logical and practical and therefore, more believable. SANTOS' version would have given rise to this improbable situation: GRAGERA would collect the daily amortizations and then give them to NIEVES; NIEVES would get GRAGERA's commissions from the amortizations and then give such commission to GRAGERA.'"[17]

These findings are in harmony with the trial court's ruling, which we quote below:

> "21. Exh. H does not prove that SANTOS gave to NIEVES and the latter received P200,000.00 for delivery to GRAGERA. Exh. H shows under its sixth column `ADDITIONAL CASH' that the additional cash was P240,000.00. If Exh. H were the liquidation of the P200,000.00 as alleged by SANTOS, then his claim is not true. This is so because it is a liquidation of the sum of P240,000.00.
>
> "21.1. SANTOS claimed that he learned of NIEVES' failure to give the P200,000.00 to GRAGERA when he received the latter's letter complaining of its delayed release. Assuming as true SANTOS' claim that he gave P200,000.00 to GRAGERA, there is no competent evidence that NIEVES did not give it to GRAGERA. The only proof that NIEVES did not give it is the letter. But SANTOS did not even present the letter in evidence. He did not explain why he did not.
>
> "21.2. The evidence shows that all money transactions of the money-lending business of SANTOS were covered by petty cash vouchers. It is therefore strange why SANTOS did not present any voucher or receipt covering the P200,000.00."[18]

In sum, the lower courts found it unbelievable that Nieves had embezzled P1,555,068.70 from the partnership. She did not remit P1,214,296.10 to Gragera, because he had deducted his commissions before remitting his collections. Exhibits "B" and "F" are merely computations of what Gragera should collect for the day; they do not show that Nieves received the amounts stated therein. Neither is there sufficient proof that she misappropriated P200,000, because Exhibit "H" does not indicate that such amount was received by her; in fact, it shows a different figure.

Petitioner has utterly failed to demonstrate why a review of these factual findings is warranted. Well-entrenched is the basic rule that factual findings of the Court of Appeals affirming those of the trial court are binding and conclusive on the Supreme Court.[19] Although there are exceptions to this rule, petitioner has not satisfactorily shown that any of them is applicable to this issue.

Third Issue:

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Accounting of Partnership

Petitioner refuses any liability for respondents' claims on the profits of the partnership. He maintains that "both business propositions were flops," as his investments were "consumed and eaten up by the commissions orchestrated to be due Gragera" - a situation that "could not have been rendered possible without complicity between Nieves and Gragera."

Respondent spouses, on the other hand, postulate that petitioner instituted the action below to avoid payment of the demands of Nieves, because sometime in March 1987, she "signified to petitioner that it was about time to get her share of the profits which had already accumulated to some P3 million." Respondents add that while the partnership has not declared dividends or liquidated its earnings, the profits are already reflected on paper. To prove the counterclaim of Nieves, the spouses show that from June 13, 1986 up to April 19, 1987, the profit totaled P20,429,520 (Exhs. "10" et seq. and "15" et seq.). Based on that income, her 15 percent share under the joint venture amounts to P3,064,428 (Exh. "10-I-3"); and Arsenio's, P2,026,000 minus the P30,000 which was already advanced to him (Petty Cash Vouchers, Exhs. "6, 6-A to 6-B").

The CA originally held that respondents' counterclaim was premature, pending an accounting of the partnership. However, in its assailed Resolution of August 17, 1998, it turned volte face. Affirming the trial court's ruling on the counterclaim, it held as follows:

> "We earlier ruled that there is still need for an accounting of the profits and losses of the partnership before we can rule with certainty as to the respective shares of the partners. Upon a further review of the records of this case, however, there appears to be sufficient basis to determine the amount of shares of the parties and damages incurred by [respondents]. The fact is that the court a quo already made such a determination [in its] decision dated August 13, 1991 on the basis of the facts on record."[20]

The trial court's ruling alluded to above is quoted below:

> "27. The defendants' counterclaim for the payment of their share in the profits of their joint venture with SANTOS is supported by the evidence.
>
> "27.1. NIEVES testified that: Her claim to a share in the profits is based on the agreement (Exhs. 5, 5-A and 5-B). The profits are shown in the working papers (Exhs. 10 to 10-I, inclusive) which she prepared. Exhs. 10 to 10-I (inclusive) were based on the daily cash flow reports of which Exh. 3 is a sample. The originals of the daily cash flow reports (Exhs. 3 and 15 to 15-D (10) were given to SANTOS. The joint venture had a net profit of P20,429,520.00 (Exh. 10-I-1), from its operations from June 13, 1986 to April 19, 1987 (Exh. 1-I-4). She had a share of P3,064,428.00 (Exh. 10-I-3) and ARSENIO, about P2,926,000.00, in the profits.
>
> "27.1.1 SANTOS never denied NIEVES' testimony that the money-lending business he was engaged in netted a profit and that the originals of the daily case flow reports were furnished to him. SANTOS however alleged that the money-lending operation of his joint venture with NIEVES and ZABAT resulted in a loss of about half a million pesos to him. But such loss, even if true, does not negate NIEVES' claim that overall, the joint venture among them - SANTOS, NIEVES and ARSENIO - netted a profit. There is no reason for the Court to doubt the veracity of [the testimony of] NIEVES.
>
> "27.2 The P26,260.50 which ARSENIO received as part of his share in the profits (Exhs. 6, 6-A and 6-B) should be deducted from his total share."[21]

After a close examination of respondents' exhibits, we find reason to disagree with the CA. Exhibit "10-I"[22] shows that the partnership earned a "total income" of P20,429,520 for the period June 13, 1986 until April 19, 1987. This entry is derived from the sum of the amounts under the following column headings: "2-Day Advance Collection," "Service Fee," "Notarial Fee," "Application Fee," "Net Interest Income" and "Interest Income on

Investment." Such entries represent the collections of the money-lending business or its gross income.

The "total income" shown on Exhibit "10-I" did not consider the expenses sustained by the partnership. For instance, it did not factor in the "gross loan releases" representing the money loaned to clients. Since the business is money-lending, such releases are comparable with the inventory or supplies in other business enterprises.

Noticeably missing from the computation of the "total income" is the deduction of the weekly allowance disbursed to respondents. Exhibits "I" et seq. and "J" et seq.[23] show that Arsenio received allowances from July 19, 1986 to March 27, 1987 in the aggregate amount of P25,500; and Nieves, from July 12, 1986 to March 27, 1987 in the total amount of P25,600. These allowances are different from the profit already received by Arsenio. They represent expenses that should have been deducted from the business profits. The point is that all expenses incurred by the money-lending enterprise of the parties must first be deducted from the "total income" in order to arrive at the "net profit" of the partnership. The share of each one of them should be based on this "net profit" and not from the "gross income" or "total income" reflected in Exhibit "10-I," which the two courts invariably referred to as "cash flow" sheets.

Similarly, Exhibits "15" et seq.,[24] which are the "Daily Cashflow Reports," do not reflect the business expenses incurred by the parties, because they show only the daily cash collections. Contrary to the rulings of both the trial and the appellate courts, respondents' exhibits do not reflect the complete financial condition of the money-lending business. The lower courts obviously labored over a mistaken notion that Exhibit "10-I-1" represented the "net profits" earned by the partnership.

For the purpose of determining the profit that should go to an industrial partner (who shares in the profits but is not liable for the losses), the gross income from all the transactions carried on by the firm must be added together, and from this sum must be subtracted the expenses or the losses sustained in the business. Only in the difference representing the net profits does the industrial partner share. But if, on the contrary, the losses exceed the income, the industrial partner does not share in the losses.[25]

When the judgment of the CA is premised on a misapprehension of facts or a failure to notice certain relevant facts that would otherwise justify a different conclusion, as in this particular issue, a review of its factual findings may be conducted, as an exception to the general rule applied to the first two issues.[26]

The trial court has the advantage of observing the witnesses while they are testifying, an opportunity not available to appellate courts. Thus, its assessment of the credibility of witnesses and their testimonies are accorded great weight, even finality, when supported by substantial evidence; more so when such assessment is affirmed by the CA. But when the issue involves the evaluation of exhibits or documents that are attached to the case records, as in the third issue, the rule may be relaxed. Under that situation, this Court has a similar opportunity to inspect, examine and evaluate those records, independently of the lower courts. Hence, we deem the award of the partnership share, as computed by the trial court and adopted by the CA, to be incomplete and not binding on this Court.

WHEREFORE, the Petition is partly GRANTED. The assailed November 28, 1997 Decision is AFFIRMED, but the challenged Resolutions dated August 17, 1998 and October 9, 1998 are REVERSED and SET ASIDE. No costs.

SO ORDERED.

Melo, (Chairman), and Sandoval-Gutierrez, JJ., concur.
Vitug, J., on official leave.

[1] First Division, composed of JJ Fidel P. Purisima, chairman; Corona Ibay-Somera, member; and Oswaldo D. Agcaoili, member and ponente.

[2] Special Former First Division, composed of JJ Quirino D. Abad Santos Jr., chairman (vice J. Purisima); Ibay-Somera and Agcaoili.

[3] CA Decision, p. 12; rollo, p. 96.

[4] CA Resolution, p. 3; rollo, p. 241.

[5] Rollo, p. 128.

[6] Referred to by petitioner in his Memorandum (p. 4) as "Monte Maria Community Development Group, Inc."

[7] CA Decision, pp. 2-4; rollo, 86-88.

[8] RTC Decision, pp. 16-17; rollo, pp. 82-83.

[9] On November 4, 1999, the Court received the Memorandum for the Respondents, signed by Atty. Benito P. Fabie. Petitioner's Memorandum, signed by Atty. Arcangelita M. Romilla-Lontok, was received on October 20, 1999. In its October 27, 1999 Resolution, this Court required the CA to explain the discrepancy in the copies of the August 17, 1998 Resolution received by the parties and to furnish it with an authentic copy thereof. The CA complied on November 12, 1999, the date on which this case was deemed submitted for resolution.

[10] Memorandum for the Petitioner, pp. 7-8; rollo, pp. 180-181.

[11] CA Decision, pp. 7-8; rollo, pp. 91-92.

[12] Art. 1767, Civil Code. The essential elements of a partnership are as follows: (1) an agreement to contribute money, property or industry to a common fund; and (2) an intent to divide the profits among the contracting parties. Vitug, Compendium Of Civil Law & Jurisprudence, 1993 rev. ed., p. 707; Fue Leung v. Intermediate Appellate Court, 169 SCRA 746, 754, January 31, 1989; and Evangelista v. Collector of Internal Revenue, 102 Phil. 140, 144, October 15, 1957.

[13] Par. 4, Articles of Agreement, Annex "D"; rollo, p. 56.

[14] Annex "D" of the Petition; rollo, p. 56.

[15] Annex "D" of the Petition; rollo, p. 56.

[16] Petitioner claims that Nieves embezzled P1.555,068.70 from the partnership (rollo, p. 12), the amount broken down as follows:

P1,214,296.10- unpaid commission due Gragera (Exh. "C-1")

140,772.60- unpaid commission for the two-day advance payment of clients (Exh. "C-11")

200,000.00- cash actually delivered by petitioner to Nieves (Exh. "H")

[17] CA Decision, pp. 10-11; rollo, pp. 94-95.

[18] RTC Decision, p. 12; rollo, p. 78.

[19] National Steel Corp. v. Court of Appeals, 283 SCRA 45, 66, December 12, 1997; Fuentes v. Court of Appeals, 268 SCRA 703, 708-709, February 26, 1997; Sps. Lagandaon v. Court of Appeals, 290 SCRA 330, 341,

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May 21, 1998.

[20] CA Resolution, p. 2; rollo, p. 240.

[21] RTC Decision, p. 14; rollo, p. 80.

[22] "Daily Interest Income & Other Income Control," Folder II, Records.

[23] Folder I, Records.

[24] Folder II, Records.

[25] Criado v. Gutierrez Hermanos, 37 Phil. 883, 894-895, March 23, 1918; and Moran Jr. v. Court of Appeals, 133 SCRA 88, 96, October 31, 1984.

[26] Fuentes v. CA, supra at 709.

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