AMALIO L. SARMIENTO DOING BUSINESS UNDER THE NAME AND STYLE A.L. SARMIENTO CONSTRUCTION, PETITIONER, VS. CELERINO YU, RESPONDENT.

G.R. NO. 141431. August 03, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Four our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals dated January 27, 1999 and its Resolution of January 6, 2000 in CA-G.R. CV No. 50518, entitled "Celerino Yu, petitioner, v. Emilio G. Samson doing business under the name and style of E.G. Samson Construction and Amalio L. Sarmiento, doing business under the name and style of A.L. Sarmiento Construction, respondents."

The factual backdrop of the instant controversy, as culled from the findings of the trial court, adopted by the appellate court, are:

Amalio L. Sarmiento, doing business under the name and style A.L. Sarmiento Construction, (Sarmiento) petitioner, was the prime contractor of the then Ministry of Public Highways hired to construct the Cainta River Floodway and Manggahan Floodway Systems. Sarmiento entered into a sub-contract with his former classmate, Emilio G. Samson, doing business under the name and style E.G. Samson Constructionto construct a portion of the work.

Samson's finances, however, were insufficient, hence, he convinced Celerino Yu, respondent herein, to join him in a partnership venture. Samson was to be the industrial partner, while Yu will put up the needed capital. Yu's expenses will be reimbursed by Sarmiento to be collected by the partnership. Both Samson and Yu will equally share in the profit. Since they have been close friends for more than three (3) decades, they did not reduce their agreement in writing.

When the Cainta Floodway Project started, Yu and Samson opened a joint bank account with the Equitable Bank, Baliuag, Bulacan Branch. Subsequently, they deposited therein the first P100,000.00 collected from Sarmiento. After the completion of the Cainta Floodway Project, they were to collect P400,000.00 from Sarmiento. However, Sarmiento insisted that they should first start constructing the Manggahan Floodway Project at a cost of P22 million.

Due to the huge amount of the project, Yu and Samson placed additional capital in their partnership. They then opened two more bank accounts. One account was with the Allied Bank, Pasig City Branch, while the other was with the Citibank, Greenhills (San Juan) Branch. They agreed that the sums collected from Sarmiento would be deposited under their joint accounts. They designated Herminio Estrella as their bookkeeper.

Sometime in 1982, Estrella found that Samson failed to deposit two (2) checks amounting to P700,000.00 he received from Sarmiento. Sensing that Samson was not being fair, Yu withdrew P638,000.00 from their joint

account with the Citibank. When Samson learned of such withdrawal, he immediately assumed control of the project operations, excluding both Yu and Estrella.

On June 10, 1982, Yu filed with the Regional Trial Court (RTC), Branch 11, Malolos, Bulacan a complaint for Sum of Money and Liquidation of Partnership with Damages against Samson and Sarmiento, docketed as Civil Case No. 1395-B. Yu prayed for the reimbursement of his expenses and payment of his share in the profits.

In his Answer with Counterclaim, Samson specifically denied having entered into a partnership with Yu. He alleged that Yu, being his close friend and compadre, offered to help him in his projects. He then authorized Yu to be a co-signatory relative to his bank accounts. He claimed that the funds for the projects were always advanced by Sarmiento.

Sarmiento filed his separate Answer denying specifically Yu's allegations in his complaint. Sarmiento alleged that the Cainta project was stopped after Samson had collected P50,000.00 from him; that Samson billed him P5,453,490.96 which he paid on May 3, 1982; and that the Ministry of Public Highways has not yet accepted the Manggahan Floodway Project as constructed, hence, the determination of Samson's billing would be premature.

After hearing, the trial court rendered its Decision, the dispositive of which is quoted as follows:

> WHEREFORE, judgment is hereby rendered for the plaintiff. Defendant Samson is hereby ordered to pay the plaintiff the following:
>
> - Two Million Two Hundred Fifty One Thousand Eight Hundred Eleven Pesos and Forty Centavos (P2,251, 811.42) consisting of the amount reimbursable to plaintiff, his total 50% participation and interest in the partnership assets and collectibles from A.L. Sarmiento Construction, with legal interest from judicial demand to reckon from the filing of the complaint;
>
> - One Hundred Thousand Pesos (P100,000.00) for moral damages;
>
> - Fifty Thousand Pesos (P50,000.00) for exemplary damages;
>
> - One Hundred Thousand Pesos (P100,000.00) for and as attorney's fees.
>
> Defendant Samson is likewise ordered to pay the costs of the suit.
>
> SO ORDERED.[2]

The trial court held that from the documentary evidence and the conduct of Samson and Yu, a partnership had been established between them although it was not reduced in writing. Both were drawing salaries from the partnership; and when the partnership bought a dump truck, the Deed of Sale was in their names.

With respect to Sarmiento, the trial court stated that he opted not to present any evidence. Thus, Yu's evidence as to the amounts still owing from Sarmiento has remained uncontradicted. As testified to by Patrick Gatan, an officer of the Ministry of Public Highways, Sarmiento submitted a Summary of Accomplishment indicating that 75.03% of the Manggahan Project is already completed. Since the sub-contract price with Samson is P22 million, then 75% of P22 million is P16,506,600.00, still due from Sarmiento. To be added to this is the P400,000.00 as payment for the construction of the Cainta Project.

Samson and Sarmiento both interposed an appeal to the Court of Appeals, the latter contending that the trial court erred in finding that there still remain collectibles from him in favor of the partnership.

On January 27, 1999, the Court of Appeals rendered its Decision affirming the RTC judgment in its entirety.

Only Sarmiento filed with this Court a Petition for Review on Certiorari.

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Petitioner Sarmiento ascribes to the Court of Appeals the sole error of finding that collectibles are due from defendant Sarmiento (petitioner), specifically the amount of P400,000.00 for the Cainta River Project, and the amount of P2,228,643.56 for the Manggahan Floodway Schedule 'B.'" Petitioner maintains that respondent Yu did not present any evidence to sustain such finding. In fact, his complaint (paragraph 2) admits that plaintiff (respondent herein) has no claim as against the said defendant (petitioner herein) to be ventilated in the instant case. Clearly, the Court of Appeals' finding that collectibles are still due from petitioner Sarmiento has no basis whatsoever.

Ordinarily, findings of fact by the Court of Appeals are not reviewable by this Court for it is not a trier of facts. One exception is when such findings are not sustained by evidence. This exception is being raised by petitioner.

Records show that the Court of Appeals adopted the following findings of the trial court:

> Defendant Sarmiento opted not to present evidence for which reason plaintiff's evidence as to the collectibles still due from A. L. Sarmiento Construction remain uncontradicted. Testified to by Mr. Patrick Gatan of the then Ministry of Public Highways was the fact that A.L. Sarmiento Construction had submitted the summary of Accomplishment (Exh. P) to the extent of 75.03% of the subject Manggahan Floodway Schedule Exh. B (T.S.N., Gatan, p. 31, August 15, 1985) which was sub-contracted with defendant Samson for the amount of P22 Million (T.S.N. Samson, pp12-13, May 28, 1992). Mathematically computed, 75% of P22 Million amounted to P16,506,600.00. On the other hand, there is still due and collectible from the initial Cainta Project the amount of P400,000.00 (T.S.N., E. Samson, p. 31, October 20, 1992).
>
> The right of the plaintiff to be reimbursed of the cash investment and to be paid his interest of 50% of the amount already collected and still to be collected from defendant Sarmiento as well as the value of assets acquired by the plaintiff is sufficiently established.

Initially, we observed that petitioner was impleaded by respondent as a co-defendant in order that a complete relief may be accorded to him (respondent).

It is not true, as claimed by petitioner, that the appellate court's finding that collectibles are still due from him is bereft of proof. On this point, Samson testified as follows:

> Atty. Jose:
>
> Q.
>
> Now, but can you remember more or less how much the defendant Mr. Sarmiento already paid you, the total, for these two (2) projects of Cainta and Manggahan?
>
> Court:
>
> As of?
>
> Atty. Jose:
>
> At any point of time, even today, your Honor.
>
> A.
>
> I do not remember because I still have collectibles and I have closed my office of construction already. I do not have any personnel anymore, not even one, sir.
>
> Atty. Jose:
>
> I see.

x x x

Atty. Jose:

Q.

And according to you, before you entered into this contract, Exh. 1 Sarmiento, over the Manggahan transition, the Cainta Channel was already finished and accomplished.

A.

More or less, sir.

Q.

When you entered into Manggahan transition project since the Cainta Channel was already accomplished you were fully paid by the defendant Sarmiento on the Cainta Channel?

A

Not yet, not yet, sir, that was an independent project, independent account.[3]

Records indicate that the Cainta Project was completed and the amount collectible is P400,000.00.[4] Also, as regards the Manggahan Project, there is a receivable from petitioner in the sum of P2,628,643.00. This was testified to by Yu. However, Sarmiento failed to rebut Yu's testimony since he opted not to present evidence.[5]

It can readily be seen that the Court of Appeals considered the evidence presented before the trial court before concluding that there are still collectibles due from petitioner.

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 50518 is AFFIRMED WITH MODIFICATION. The trial Court is ordered to determine the exact amounts collectible from petitioner Sarmiento in favor of respondent Yu. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Corona, Azcuna and Garcia, JJ., concur.

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[1] Per Associate Justice Jorge S. Imperial (retired) and concurred in by Associate Justice Godardo A. Jacinto and Associate Justice Roberto A. Barrios. Rollo, pp. 21-30.

[2] Id., p. 55.

[3] TSN dated October 20, 1992, id., p. 94.

[4] TSN dated October 20, 1992, id., p.89.

[5] Decision of the Court of Appeals, id., p. 28.

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