ERNESTO L. SALAS, G.R. NO. 157766 PETITIONER, VS. STA. MESA MARKET CORPORATION AND THE HEIRS OF PRIMITIVO E. DOMINGO, RESPONDENTS.

G.R. NO. 157766. July 12, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the April 30, 2001 decision of the Court Appeals (CA) in CA-G.R. CV No. 50888[2] and its April 3, 2003 resolution denying reconsideration.

In a letter-agreement[3] dated October 15, 1984, Primitivo E. Domingo handed the management of his estate, including the respondent corporation Sta. Mesa Market Corporation (SMMC), to petitioner Ernesto L. Salas.[4] As estate manager, petitioner was primarily tasked to ensure SMMC's continued viability and profitability by redeveloping the Sta. Mesa market and restructuring the corporation's finances.[5] Domingo, on the other hand, bound himself to transfer (on or before June 30, 1985)[6] 30% of SMMC's subscribed and paid-up capital stock to petitioner as part of his compensation. But, if petitioner failed to achieve a monthly market revenue of at least P350,000, he would be obliged to return the shares of stock of SMMC to Domingo.[7]

On December 28, 1984, Domingo, as chairman of SMMC, and petitioner, in his personal capacity and as chairman of Inter-Alia Management Corporation (Inter-Alia), formalized their agreement under a property and financial management contract (management contract).[8]

Shortly after the execution of the contract, SMMC, under petitioner's management, leased the Sta. Mesa market to Malaca Realty Corporation (Malaca).[9] But it became apparent soon thereafter that Malaca was financially incapable of improving and expanding the existing facilities of the Sta. Mesa market.[10] In fact, it was unable to pay the monthly rent.[11] Thus, SMMC terminated its lease contract with Malaca.[12] As a result, its board of directors became dissatisfied with petitioner's management of the corporation. Thereafter, it ended its management contract with petitioner (and Inter-Alia).[13]

On June 8, 1987, petitioner filed an action for specific performance and damages[14] against SMMC and Domingo[15] in the Regional Trial Court (RTC) of Quezon City.[16] He alleged that SMMC's monthly market revenue had surpassed P350,000 yet Domingo refused to comply with his obligation to deliver 30% of the subscribed and paid-up capital stock of SMMC to him.[17]

In his answer,[18] Domingo argued that petitioner was not entitled to the shares of SMMC. On the contrary, the corporation suffered additional losses and incurred new liabilities (which respondents consistently itemized in their pleadings) amounting to P1,935,995.06 over the twenty-one (21) months petitioner was managing it.[19]

On August 21, 1995, the RTC rendered a decision in favor of petitioner.[20] The trial court considered copies of SMMC's audited financial statements which showed an improvement in the corporation's monthly average gross income (from P251,790 in 1984 to P409,794 in 1985). It found that petitioner not only increased SMMC's

monthly gross income but also exceeded the target monthly gross income of P350,000.[21] Hence, it ordered respondent heirs to deliver the shares of SMMC (equivalent to 30% of its total subscribed and paid-up capital stocks) to petitioner.[22]

Respondent heirs appealed the judgment of the RTC to the CA. On April 30, 2001, the appellate court rendered its decision. It found that the trial court erred in admitting petitioner's documentary evidence. According to the CA, petitioner failed to prove the authenticity of the audited financial statements. He did not present a representative of SMMC's external auditor, Bejarin Jimenez & Co., to testify on the genuineness and due execution of the audited financial statements of SMMC. Instead, petitioner presented a memorandum prepared by a member of his management team attesting to the increase in the corporation's monthly market revenue. For this reason, the appellate court ruled that the audited financial statements were not only self-serving but also hearsay.[23] Thus, the CA reversed the RTC decision and dismissed petitioner's complaint.

Petitioner moved for reconsideration but his motion was denied.[24] Thus, this petition.

Petitioner avers that Amado Domingo, a vice-president of SMMC and an heir of the deceased Primitivo E. Domingo, testified that the audited financial statements presented in court were copies of those submitted by SMMC to the Bureau of Internal Revenue (BIR) and the Securities and Exchange Commission (SEC) for purposes of tax payments and compliance with reportorial requirements, respectively.[25] Therefore, Amado Domingo, in effect, admitted the genuineness and due execution of the documents which made authentication unnecessary.

Respondents, on the other hand, insist that the audited financial statements were inadmissible in evidence due to lack of proper authentication.[26]

We agree with the CA.

The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. Financial statements, whether audited or not, are, as general rule, private documents.[27] However, once financial statements are filed with a government office pursuant to a provision of law,[28] they become public documents.[29]

Whether a document is public or private is relevant in determining its admissibility as evidence. Public documents are admissible in evidence even without further proof of their due execution and genuineness. [30] On the other hand, private documents are inadmissible in evidence unless they are properly authenticated.[31] Section 20, Rule 132 of the Rules of Court provides:

> Section 20. Proof of private documents. Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> - By anyone who saw the document executed or written; or
>
> - 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.

Petitioner and respondents agree that the documents presented as evidence were mere copies of the audited financial statements submitted to the BIR and SEC. Neither party claimed that copies presented were certified true copies[32] of audited financial statements obtained or secured from the BIR or the SEC which under Section

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19(c), Rule 132 would have been public documents. Thus, the statements presented were private documents. Consequently, authentication was a precondition to their admissibility in evidence.

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed[33] or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.[34] In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented.[35] The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.

Nevertheless, petitioner insists on the application of an exception to this rule: authentication is not necessary where the adverse party has admitted the genuineness and due execution of a document.[36] The fact, however, was that nowhere in his testimony did Amado Domingo categorically admit the authenticity of the copies of the audited financial statements. He only testified that SMMC regularly submitted its audited financial statements to the BIR and SEC.[37] There was never any admission that the documents presented by petitioner were true or faithful copies of those submitted to the BIR and the SEC.[38]

WHEREFORE, the petition is hereby DENIED. The April 30, 2001 decision and April 3, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 50888 are hereby AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[**] The Court of Appeals was impleaded as a respondent but was excluded pursuant to Section 4 of Rule 45 of the Rules of Court.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Conchita Carpio-Morales (now a member of this Court) and concurred in by Associate Justices Candido V. Rivera (retired) and Rebecca de Guia-Salvador of the Eleventh Division of the Court of Appeals. Rollo, pp. 31-38.

[3] Notarized on November 8, 1984. Id., pp. 47-50.

[4] Id., pp. 47-48.

[5] Id., p. 47.

[6] Id., p. 48. According to the letter-agreement, the shares must be transferred on a ï¿½front-endedï¿½ basis but not later than December 31, 1984. However, petitioner's amended complaint stated that the delivery must not be later than June 30, 1985. Thus, the latter date was binding on him as a judicial admission.

[7] Id., pp. 47-48.

[8] Id., pp. 101-105, 247-253.

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[9] Id., p. 108.

[10] Id., p. 110.

[11] Id.

[12] Id.

[13] Id., pp. 20, 33, 110.

[14] Docketed as Civil Case No. Q-51018.

[15] In the course of trial, Domingo passed away and was substituted by respondent heirs. Id., pp. 76-77, 188.

[16] Amended on November 26, 1992. Id., pp. 56-61.

[17] Id., pp. 59-60.

[18] Id., pp. 63-69.

[19] Id., pp. 64-67.

[20] Id., pp. 74-86.

[21] Id., p. 81.

[22] Id., p. 86.

[23] Id., pp. 33-34.

[24] Id., p. 40.

[25] Id., pp. 24-25, 203.

[26] Id., pp. 256-266.

[27] See RULES OF COURT, Rule 132, Sec. 19. The section provides:

Section 19. Classes of documents.-- For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

- Documents acknowledged before a notary public except last wills and testaments; and

- Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

[28] See TAX CODE, Sec. 32, Securities Code, Sec. 17.

[29] Rules of Court, Rule 132, Sec. 19(c).

[30] See RULES OF COURT, Rule 132, Secs. 23, 24, 25, 27 and 30. See also Antillon v. Barcelon, 37 Phil. 148 (1917).

[31] Salic v. Commission on Elections, G.R. Nos. 157007, 157015, 17 March 2004, 425 SCRA 735, 752. See also

Chua v. CA, G.R. No. 88383, 19 February 1992, 206 SCRA 339, 345 citing General Enterprises, Inc. v. Lianga Bay Logging Co., Inc., G.R. No. L-18487, 31 August 1964, 11 SCRA 733.

[32] See RULES OF COURT, Rule 132, Sec. 27. The section provides:

> Sec. 27. Public record of a public document. An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

[33] RICARDO J. FRANCISCO, EVIDENCE: RULES OF COURT IN THE PHILIPPINES (Rules 128-138), 3rd ed., pp. 504-505.

[34] Id. citing Bough v. Cantiveros, 40 Phil. 213 (1919).

[35] Id. at 505.

[36] Tria v. Ortiz , 14 Phil. 551, 554 (1909). See also Chua v. CA, supra note 31.

[37] Rollo, pp. 23-24, 114-117, 260-263.

[38] Compare Tria v. Ortiz, supra note 36. This case involves the proper application of the exception.

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