

**DUTCH BOY PHILIPPINES, INC., PETITIONER, VS. RONALD SENIEL
SUBSTITUTED BY LIGAYA QUIMPO AND CESARIO SENIEL
SUBSTITUTED BY EDELMIRA P. SENIEL, RESPONDENTS.**

G.R. No. 170008. January 19, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Court of Appeals Decision[1] dated June 30, 2005 in CA-G.R. CV No. 70870. The assailed decision, in turn, reversed and set aside the Regional Trial Court (RTC) Decision[2] dated December 29, 2000 in Civil Case No. 94-2720; and, consequently, dismissed the complaint filed by petitioner Dutch Boy Philippines, Inc. against Ronald[3] and Cesario[4] Seniel.

The factual and procedural antecedents follow:

Petitioner is a corporation engaged in manufacturing quality paint products and selling them through authorized dealers in various parts of the country.[5] Jonathan Joyohoy (Joyohoy), on the other hand, was a sales representative of petitioner for Mindanao, based in Davao City.[6]

Sometime between May and June 1994, petitioner conducted an audit of its sales accounts with its authorized dealers in Mindanao. In the course of the audit, petitioner discovered that its authorized dealers[7] had outstanding balances consisting of paint products withdrawn from the Certified Mindanao Marketing Corporation (CMMC) warehouse. Combining all the dealers' accountabilities yielded a total amount of P1,939,125.16.[8]

The above findings prompted petitioner to send letters of confirmation to the concerned dealers for the latter to confirm their respective balances. Upon receipt of said letters, the authorized dealers disclaimed their alleged accountabilities; and contended instead that the same had already been paid or that they never ordered/received the goods stated therein.[9] In view thereof, petitioner issued a Memorandum[10] to Joyohoy (being the sales representative in the area) requiring the latter to explain the transactions involving the concerned dealers and their corresponding accountabilities. In response, Joyohoy explained that the subject stocks were withdrawn from the warehouse by Ronald and Cesario Seniel, or their representatives and delivered to Teknik Marketing, a sole proprietorship[11] engaged as a painting contractor.[12]

For failure to collect the amount due it, petitioner commenced an action for Collection of Sum of Money[13] against Joyohoy, Ronald and Cesario. Petitioner claimed that the three defendants, in conspiracy, acted fraudulently in preparing sales invoices which were used to withdraw the subject paint products delivered to Teknik Marketing, to the damage and prejudice of petitioner. Petitioner likewise demanded from Joyohoy the delivery of such additional amounts representing the payments made by some authorized dealers which were not remitted by the sales agent.

In answer to petitioner's complaint, Ronald and Cesario admitted that they had transacted business with Joyohoy; specifically, the purchase of various paint products offered by him which they used for their painting projects.

They, however, added that it was Joyohoy who prepared the necessary purchase orders, facilitated the delivery of the paint products and collected payments as well. [14] Ronald and Cesario disavowed participation in any fraudulent act committed by Joyohoy. For his part, Joyohoy denied liability and contended that it was Ronald and Cesario who received the paint products and were, thus, liable for petitioner's claims.[15]

On December 29, 2000, the RTC rendered a Decision in favor of petitioner and against Joyohoy, Ronald and Cesario, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendants:

- 1) Ordering defendants Jonathan Joyohoy, Ronald Seniel and Cesario Seniel to pay, jointly and severally, the amount of P783,097.05 to the plaintiff together with the legal interest from the filing of the complaint;
- 2) Ordering defendant Jonathan Joyohoy to pay the plaintiff the following amounts:
 - a - P859,589.57 with legal interest from the filing of the complaint;
 - b - P147,432.08 with legal interest from the filing of the complaint;
- 3) attorney's fees in the amount of P100,000.00.
- 4) costs of suit.

SO ORDERED.[16]

In arriving at this conclusion, the RTC gave credence to the positive testimonies of the witnesses for petitioner. The trial court believed that the subject paint products were withdrawn by Joyohoy, Ronald and Cesario, in fraud of petitioner. Hence, the monetary award in favor of petitioner.

On appeal to the Court of Appeals, the appellate court reversed and set aside the RTC decision, and dismissed the complaint as against Ronald and Cesario. The dispositive portion of the assailed CA decision is quoted hereunder:

WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE and the complaint as against appellants Ronald Seniel and Cesario Seniel is hereby DISMISSED. The Court hereby orders appellee to pay moral damages in the amount of Two Hundred Thousand (Php200,000.00) Pesos to each of the appellants and compensatory damages of One Hundred Thousand (Php100,000.00) Pesos each by reason of the wrongful attachment of their properties.

SO ORDERED.[17]

The appellate court declared that petitioner failed to adduce sufficient evidence to establish conspiracy between Joyohoy, on the one hand, and Ronald and Cesario, on the other. What was established, according to the CA, was simply the withdrawal of the subject paint products from petitioner's warehouse, upon the order of Joyohoy. Even if Ronald and Cesario indeed purchased paint products through Joyohoy, no anomaly can be attributed to the transaction considering that petitioner had previously done business with persons or entities who were not authorized dealers. Therefore, liability could attach only to Joyohoy and not to Ronald and Cesario.

Aggrieved, petitioner now comes before this Court in this petition for review on certiorari, anchored on the following grounds:

- WHETHER THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING AND SETTING ASIDE THE DECISION DATED DECEMBER 29, 2000 DECLARING THAT PETITIONER HEREIN AS PLAINTIFF WAS NOT ABLE TO SUFFICIENTLY ESTABLISH CONSPIRACY AMONG DEFENDANT JOYOHAY AND RESPONDENTS RONALD SENIEL AND

CESARIO SENIEL DESPITE THE CLEAR FINDINGS OF FACT BY THE LOWER COURT THAT CONSPIRACY DID EXIST TO DEFRAUD HEREIN PETITIONER.

- WHETHER THE COURT OF APPEALS ERRED IN ORDERING HEREIN PETITIONER TO PAY EACH [OF THE] RESPONDENTS MORAL DAMAGES IN THE AMOUNT OF P200,000 AND COMPENSATORY DAMAGES FOR P100,000 FOR WRONGFUL ATTACHMENT OF THEIR PROPERTIES.[18]

The petition is partly meritorious.

We reiterate the well-entrenched principle that this Court is not a trier of facts and does not, as a rule, undertake a re-examination of the evidence presented by the parties. A number of exceptions[19] have nevertheless been recognized.[20] Indeed, the difference between the findings of the trial and appellate courts, leading to entirely disparate dispositions, is reason enough for this Court to review the evidence in this case.[21]

After a careful evaluation of the records, we find no cogent reason to disturb the findings of fact and conclusions of law of the Court of Appeals. The appellate court is correct in saying that petitioner failed to sufficiently establish Ronald and Cesario's liability.

It is a basic rule in civil cases that the party having the burden of proof must establish his case by preponderance of evidence.[22] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[23] Although the evidence adduced by plaintiff is stronger than that presented by defendant, a judgment cannot be entered in favor of the former, if his evidence is not sufficient to sustain his cause of action.[24]

Petitioner's cause of action in its complaint against Ronald and Cesario was the act of defraudation which they allegedly committed in conspiracy with Joyohoy. It is, therefore, imperative for petitioner to prove that fraud was committed and that conspiracy existed.

It was established that the goods were brought out of the warehouse upon the order of Joyohoy. Per his job description, Joyohoy should have delivered the products to the authorized dealers, collected their payments, then remitted his collections to petitioner's depository bank.[25] Unfortunately for petitioner, Joyohoy used his position as an authorized sales representative and abused the trust reposed in him, in misappropriating the subject paint products.

In finding Ronald and Cesario liable, the trial court relied on the testimony of the warehouseman Romeo Gutierrez (Romeo) that Joyohoy instructed him on several occasions to release to the former various paint products. The testimony of Manuel Antolin (Antolin) was also cited to show how the alleged defraudation was discovered by petitioner. Likewise adduced as evidence was the handwritten response letter sent by Joyohoy to petitioner stating that the subject paint products were withdrawn by Ronald and Cesario and/or their representatives.[26] Said pieces of evidence, however, lack probative value.

A thorough evaluation of the testimony of Romeo shows that, indeed, the subject paint products were withdrawn from the warehouse upon the authority and instruction of Joyohoy. However, it is wanting in details as to the alleged participation of Ronald and Cesario that would make them conspirators in defrauding petitioner. While petitioner claimed in its complaint that Ronald and Cesario had a hand in the preparation of fictitious sales orders and invoices, Romeo admitted in his testimony that he himself was the one who prepared them upon the instruction of Joyohoy. If at all, Ronald and Cesario's participation was limited to receiving the subject paint

products. But apart from Romeo's bare allegation, there is no iota of evidence to show such fact of receipt. If we follow the procedure in releasing petitioner's products from the warehouse, as testified to by Romeo, the signature of the person receiving the goods was necessary. Yet again, the signature of Ronald and Cesario never appeared in any of the documentary evidence presented.

The testimony of Antolin establishes a disparity in the accounts, as appearing in petitioner's records and those of the dealers. It shows that Joyohoy was repeatedly involved in anomalous transactions by preparing fictitious sales invoices, withdrawing paint products from the warehouse, then selling them to various establishments in Mindanao with whom petitioner had no dealings. Thus, apart from the P783,097.05 liability charged to Joyohoy in concert with Ronald and Cesario, the trial court likewise made Joyohoy answerable for the amount of P859,589.57 arising from another illegal transaction.[27] However, notwithstanding the overwhelming evidence against Joyohoy, no clear evidence could link Ronald and Cesario to these fraudulent transactions. Besides, as correctly observed by the appellate court, sales transactions that were conducted with non-authorized dealers were sanctioned by petitioner.[28]

As to the letter of Joyohoy, wherein he narrated the participation of Ronald and Cesario, considering that he did not testify on the contents thereof, the same is hearsay. An unverified and unidentified private document cannot be accorded probative value. It must be rejected because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party the opportunity to question its contents. The petitioner's failure to present the author of the letter renders its contents suspect and of no probative value.[29]

Neither can we consider said letter as an extrajudicial admission of a conspirator against his co-conspirator.[30] For one, the admission made by Joyohoy was made after the alleged conspiracy had ceased to exist. More importantly, the fact of conspiracy was not clearly established.[31]

At this point, we reiterate that a party who alleges a fact has the burden of proving it. Whoever alleges fraud or mistake affecting a transaction must substantiate it, since it is presumed that a person takes ordinary care of his concerns, and that private transactions have been fair and regular.[32]

Good faith is always presumed, and it is the burden of the party claiming otherwise to adduce clear and convincing evidence to the contrary. No judgment for damages could arise where the source of injury, be it fraud, fault, or negligence, was not affirmatively established by competent evidence.[33]

In view of the foregoing, Ronald and Cesario cannot be held jointly and severally liable with Joyohoy. The CA was, therefore, correct in dismissing the complaint as against Ronald and Cesario.

The CA, however, erred in awarding moral and compensatory damages in favor of Ronald and Cesario, as it did not disclose in the body of its decision the factual basis for such awards. Whenever such awards are made, the court must explicitly state in the body of its decision, and not merely in its dispositive portion, the legal reason for the award.[34]

In the present case, the appellate court awarded damages only in the dispositive portion of the decision, without stating therein clearly and distinctly the factual and legal bases thereof. Thus, following the doctrine enunciated in *Pang-oden v. Leonen*[35] and *Ranola v. Court of Appeals*,[36] said awards should be deleted. The grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[37]

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated June 30, 2005 in CA-G.R. CV No. 70870 is **AFFIRMED** subject to the **MODIFICATION** that the

award of moral and compensatory damages is DELETED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Leonardo-De Castro, JJ., concur.

* Additional member, per Special Order No. 546 dated January 5, 2009.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo, concurring; rollo, pp. 67-85.

[2] Penned by Judge Teofilo L. Guadiz, Jr., rollo, pp. 49-65.

[3] Now deceased and substituted by his surviving spouse, Ligaya Quimpo Seniel; CA rollo, pp. 82-83.

[4] Now deceased and substituted by his surviving spouse, Edelmira P. Seniel; embodied in a Resolution dated June 30, 2008.

[5] Rollo, p. 135.

[6] Id. at 68.

[7] The concerned authorized dealers are as follows:

1. Uyanguren Hardware P 7,051.31
2. Davao Paint Trade 6 P 159,799.3
3. New City Hardware P 277,070.42
4. Davao Gold Star Hardware P 31,897.00
5. Davao Starlight Hardware P 508,070.91
6. Butuan Champion Hardware P 147,432.08
7. Pioneer Trading P 39,163.16
8. Deco Arts P 675,149.40
9. Supreme Merchant P 92,564.92
10. Tagum Commercial Center P 920.00

[8] Rollo, pp. 68-69.

[9] Id.. at 69.

[10] Folder of Exhibits, p. 732.

[11] Registered in the name of Cesario Seniel.

[12] Folder of Exhibits, pp. 732-733.

[13] Records, pp. 1-12.

[14] Rollo, p. 71.

[15] Id.

[16] Id. at 64-65.

[17] Id. at 84-85.

[18] Id. at 138.

[19] The following are the exceptions enumerated in *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86:

- when the findings are grounded entirely on speculation, surmises or conjectures;
- when the inference made is manifestly mistaken, absurd or impossible;
- when there is grave abuse of discretion;
- when the judgment is based on a misapprehension of facts;
- when the findings of facts are conflicting;
- 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;
- when the findings are contrary to the trial court;
- when the findings are conclusions without citation of specific evidence on which they are based;
- 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;
- when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record x x x.

[20] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441.

[21] *Gajudo v. Traders Royal Bank*, G.R. No. 151098, March 21, 2006, 485 SCRA 108, 122.

[22] *Montanez v. Mendoza*, 441 Phil. 47, 56 (2002).

[23] *Ong v. Yap*, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 49-50.

[24] *Ong v. Yap*, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 50.

[25] *Rollo*, p. 135.

[26] *Folder of Exhibits*, pp. 733-734.

[27] *Rollo*, p. 65.

[28] Id. at 82-84.

[29] *Mallari v. People*, G.R. No. 153911, December 10, 2004, 446 SCRA 74, 97.

[30] Section 30, Rule 130 of the Revised Rules on Evidence provides:

Sec. 30. Admission by conspirator. - The act or declaration of a conspirator relating to the conspiracy during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other

than such act or declaration.

[31] The following are the requisites for the admissibility in evidence of the acts and declarations of a conspirator against his co-conspirator:

- That the conspiracy be first proved by evidence other than the admission itself;
- That the admission relates to the common object;
- That it has been made while the declarant was engaged in carrying out the conspiracy; (Evidence, Francisco, Third Edition, pp. 202-204)

[32] *Memita v. Masongsong*, G.R. No. 150912, May 28, 2007, 523 SCRA 244, 256-257; *Mangahas v. Court of Appeals*, 364 Phil. 13, 21 (1999); see *Cuenca v. Atas*, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 82.

[33] *Chiang Yia Min v. Court of Appeals*, 407 Phil. 944, 965 (2001).

[34] *Pang-oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102; *Ranola v. Court of Appeals*, 379 Phil. 1, 13 (2000).

[35] G.R. No. 138939, December 6, 2006, 510 SCRA 93.

[36] 379 Phil. 1, (2000).

[37] *Pang-oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102; *Ranola v. Court of Appeals*, 379 Phil. 1, 13 (2000).

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