

MORA ELECTRIC CO., INC., PETITIONER, VS. PAULINO MATIC AND BENITA QUIOGUE VIUDA DE DEL ROSARIO, RESPONDENTS.*G.R. No. 45441. June 26, 1939*

Ponente: AVANCEÑA, C.J.

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Paulino Matic obtained from the City of Manila the concession to provide the lighting system of the Manila North and South Cemeteries on All Saints' Day in 1934, for the amount of P8,733, the payment of which was guaranteed by Luzon Surety Co.

Matic thereafter transferred his rights to said concession to Benita Quiogue, authorizing her to enter into a contract with Mora Electric Co., Inc., to make the installation and to pay the P8,773 to the City of Manila with the money to be collected from the installations.

Benita Quiogue entered into this contract with Mora Electric Co., Inc., each party binding itself to contribute the necessary labor and material which the latter may be unable to put up, and dividing the profits between them after deducting therefrom all the necessary expenses for labor, materials, cost of the current and the amount of P8,778 which should be paid to the city, both parties also binding themselves, for this purpose, to report the expenses which each might have incurred.

The business was a failure because it did not yield the expected profit.

For failure to pay the amount of P8,773 owing to the City of Manila for the concession, Luzon Surety Co., had to make good the said amount. Luzon Surety Co., thereupon sued Paulino Matic and Benita Quiogue for the recovery of this amount. Paulino Matic and Benita Quiogue, in turn, filed the present action against Mora Electric Co., Inc., to recover from the latter the amount of P8,773 to which they were sentenced to pay in the case commenced against them by Luzon Surety Co. The Court of Appeals, affirming the judgment of the Court of First Instance, sentenced Mora Electric Co., Inc., to pay to Paulino Matic and Benita Quiogue the amount of P8,773, minus that of P235 which had already been paid on account of the former, or P8,518 with interest thereon at 12 per cent per annum, plus 8 per cent of this amount as attorney's fees.

Mora Electric Co., Inc., has appealed this case to this court on certiorari. The Court of Appeals, relying upon the evidence oral and documentary, held that Mora Electric Co., Inc., bound itself in its contract with Benita Quiogue to pay the City of Manila the P8,773. Unable to review this evidence, we have to decide this appeal on the basis of this finding of the Court of Appeals. Having undertaken to pay this amount to the City of Manila, Mora Electric Co., Inc., is under a duty to reimburse whoever made good the amount for it, namely, Paulino Matic and Benita Quiogue.

However, Mora Electric Co., Inc., also contends that, at all events, Benita Quiogue should share in the payment of this amount to the City of Manila. It alleges that the contract entered into between them is a civil partnership. It then invokes the provisions of the Civil Code regarding the distribution of the profits and losses between the

partners.

This question, however, is not raised in this case. It properly pertains to the liquidation of the partnership and the distribution of the profits and losses, which are not here at issue. The amount now sought to be recovered is not claimed as loss or profit, but as the contribution which Mora Electric Co., Inc., bound itself to make to the partnership and which it was under a duty to pay, although it was paid instead by Matic and Quiogue. The liquidation of the partnership is not now sought. Indeed, there is no reason for such liquidation. While it is mentioned in the appealed decision that the business produced P9,636.40, it does not appear that the parties have made a report, as they have agreed to do, of the expenses incurred by each, and it is not possible to determine whether there was a profit or loss and what is the extent thereof and the measure of the respective liability or benefit.

As to the interest on the amount of P8,518, Matic and Quiogue having been sentenced to pay it, it constitutes damages suffered by them due to the breach by Mora Electric Co., Inc., of the obligation it assumed to pay the City the amount of the concession. The same is true with respect to the judgment to pay 8 per cent on the amount of P8,518.

Wherefore, the judgment of the Court of Appeals is affirmed, with the costs to the petitioner. So ordered.

Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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