

ISABELO MORAN, JR., PETITIONER, VS. THE HON. COURT OF APPEALS AND MARIANO E. PECSON, RESPONDENTS.

G.R. No. 59956. October 31, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari of the decision of the respondent Court of Appeals which ordered petitioner Isabelo Moran, Jr. to pay damages to respondent Mariano E. Pecson.

As found by the respondent Court of Appeals, the undisputed facts indicate that:

x x x x x x x x

"x x x on February 22, 1971 Pecson and Moran entered into an agreement whereby both would contribute P15,000 each for the purpose of printing 95,000 posters (featur-ing the delegates to the 1971 Constitutional Convention), with Moran actually supervising the work; that Pecson would receive a commission of P1,000 a month starting on April 15, 1971 up to December 15, 1971; that on December 15, 1971, a liquidation of the accounts in the distribution and printing of the 95,000 posters would be made; that Pecson gave Moran P10,000 for which the latter issued a receipt; that only a few posters were printed; that on or about May 28, 1971, Moran executed in favor of Pecson a promissory note in the amount of P20,000 payable in two equal installments (P10,000 payable on or before June 15, 1971 and P10,000 payable on or before June 30, 1971), the whole sum becoming due upon default in the payment of the first installment on the date due, complete with the costs of collection."

Private respondent Pecson filed with the Court of First Instance of Manila an action for the recovery of a sum of money and alleged in his complaint three (3) causes of action, namely: (1) on the alleged partnership agreement, the return of his contribution of P10,000.00, payment of his share in the profits that the partnership would have earned, and, payment of unpaid commission; (2) on the alleged promissory note, payment of the sum of P20,000.00; and, (3) moral and exemplary damages and attorney's fees.

After the trial, the Court of First Instance held that:

"From the evidence presented it is clear in the mind of the court that by virtue of the partnership agreement entered into by the parties - plaintiff and defendant - the plaintiff did contribute P10,000.00, and another sum of P7,000.00 for the Voice of the Veteran or Delegate Magazine. Of the expected 95,000 copies of the posters, the defendant was able to print 2,000 copies only all of which, however, were sold at P5.00 each. Nothing more was done after this and it can be said that the venture did not really get off the ground. On the other hand, the plaintiff failed to give his full contribution of P15,000.00. Thus, each party is entitled to rescind the contract which right is implied in reciprocal obli-gations under Article 1385 of the Civil Code whereunder 'rescission creates the obligation to return the things which were the object of the contract x x x.

"WHEREFORE, the court hereby renders judgment ordering defendant Isabelo C. Moran, Jr. to return to plaintiff Mariano E. Pecson the sum of P17,000.00, with interest at the legal rate from the filing of the complaint on June 19, 1972, and the costs of the suit.

"For insufficiency of evidence, the counterclaim is hereby dismissed."

From this decision, both parties appealed to the respondent Court of Appeals. The latter likewise rendered a decision against the petitioner. The dispositive portion of the decision reads:

"PREMISES CONSIDERED, the decision appealed from is hereby SET ASIDE, and a new one is hereby rendered, ordering defendant-appellant Isabelo C. Moran, Jr. to pay plaintiff-appellant Mariano E. Pecson:

"(a) Forty-seven thousand five hundred (P47,500) (the amount that could have accrued to Pecson under their agreement);

"(b) Eight thousand (P8,000), (the commission for eight months);

"(c) Seven thousand (P7,000) (as a return of Pecson's investment for the Veteran's Project);

"(d) Legal interest on (a), (b) and (c) from the date the complaint was filed (up to the time payment is made)"

The petitioner contends that the respondent Court of Appeals decided questions of substance in a way not in accord with law and with Supreme Court decisions when it committed the following errors:

I

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING PETITIONER ISABELO C. MORAN, JR. LIABLE TO RESPONDENT MARIANO E. PECSON IN THE SUM OF P47,500 AS THE SUP-POSED EXPECTED PROFITS DUE HIM.

II

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING PETITIONER ISABELO C. MORAN, JR. LIABLE TO RESPONDENT MARIANO E. PECSON IN THE SUM OF P8,000, AS SUPPOSED COMMISSION IN THE PARTNERSHIP ARISING OUT OF PECSON'S INVESTMENT.

III

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN HOLDING PETITIONER ISABELO C. MORAN, JR. LIABLE TO RESPONDENT MARIANO E. PECSON IN THE SUM OF P7,000 AS A SUPPOSED RETURN OF INVESTMENT IN A MAGAZINE VENTURE.

IV

ASSUMING WITHOUT ADMITTING THAT PETITIONER IS AT ALL LIABLE FOR ANY AMOUNT, THE HONOR-ABLE COURT OF APPEALS DID NOT EVEN OFFSET PAYMENTS ADMITTEDLY RECEIVED BY PECSON FROM MORAN.

V

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT GRANTING THE PETITIONER'S COMPULSORY COUNTERCLAIM FOR DAMAGES.

The first question raised in this petition refers to the award of P47,500.00 as the private respondent's share in the unrealized profits of the partnership. The peti-tioner contends that the award is highly speculative. The petitioner maintains that the respondent court did not take into account the great risks involved in the business undertaking.

We agree with the petitioner that the award of speculative damages has no basis in fact and law.

There is no dispute over the nature of the agreement between the petitioner and the private respondent. It is a contract of partnership. The latter in his complaint alleged that he was induced by the petitioner to enter into a partnership with him under the following terms and conditions:

- "1. That the partnership will print colored posters of the delegates to the Constitutional Convention;
- "2. That they will invest the amount of Fifteen Thousand Pesos (P15,000.00) each;
- "3. That they will print Ninety Five Thousand (95,000) copies of the said posters;
- "4. That plaintiff will receive a commission of One Thousand Pesos (P1,000.00) a month starting April 15, 1971 up to December 15, 1971;
- "5. That upon the termination of the partnership on December 15, 1971, a liquidation of the account pertaining to the distribution and printing of the said 95,000 posters shall be made."

The petitioner on the other hand admitted in his answer the existence of the partnership.

The rule is, when a partner who has undertaken to contribute a sum of money fails to do so, he becomes a debtor of the partnership for whatever he may have promised to contribute (Art. 1786, Civil Code) and for interests and damages from the time he should have complied with his obligation (Art. 1788, Civil Code). Thus in *Uy v. Puzon* (79 SCRA 598), which interpreted Art. 2200 of the Civil Code of the Philippines, we allowed a total of P200,000.00 compensatory damages in favor of the appellee because the appellant therein was remiss in his obligations as a partner and as prime contractor of the construction projects in question. This case was decided on a particular set of facts. We awarded compensatory damages in the *Uy* case because there was a finding that the "constructing business is a profitable one and that the UP construction company derived some profits from its contractors in the construction of roads and bridges despite its deficient capital." Besides, there was evidence to show that the partnership made some profits during the periods from July 2, 1956 to December 31, 1957 and from January 1, 1958 up to September 30, 1959. The profits on two government contracts worth P2,327,335.76 were not speculative. In the instant case, there is no evidence whatsoever that the partnership between the petitioner and the private respondent would have been a profitable venture. In fact, it was a failure doomed from the start. There is therefore no basis for the award of speculative damages in favor of the private respondent.

Furthermore, in the *Uy* case, only Puzon failed to give his full contribution while Uy contributed much more than what was expected of him. In this case, however, there was mutual breach. Private respondent failed to give his entire contribution in the amount of P15,000.00. He contributed only P10,000.00. The petitioner likewise failed to give any of the amount expected of him. He further failed to comply with the agreement to print 95,000 copies of the posters. Instead, he printed only 2,000 copies.

Article 1797 of the Civil Code provides:

"The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion."

Being a contract of partnership, each partner must share in the profits and losses of the venture. That is the essence of a partnership. And even with an assurance made by one of the partners that they would earn a huge amount of profits, in the absence of fraud, the other partner cannot claim a right to recover the highly speculative profits. It is a rare business venture guaranteed to give 100% profits. In this case, on an investment of P15,000.00, the respondent was supposed to earn a guaranteed P1,000.00 a month for eight months and around P142,500.00 on 95,000 posters costing P2.00 each but 2,000 of which were sold at P5.00 each. The fantastic nature of expected

profits is obvious. We have to take various factors into account. The failure of the Commission on Elections to proclaim all the 320 candidates of the Constitutional Convention on time was a major factor. The petitioner used his best business judgment and felt that it would be a losing venture to go on with the printing of the agreed 95,000 copies of the posters. Hidden risks in any business venture have to be considered.

It does not follow however that the private respondent is not entitled to recover any amount from the petitioner. The records show that the private respondent gave P10,000.00 to the petitioner. The latter used this amount for the printing of 2,000 posters at a cost of P2.00 per poster or a total printing cost of P4,000.00. The records further show that the 2,000 copies were sold at P5.00 each. The gross income therefore was P10,000.00. Deducting the printing costs of P4,000.00 from the gross income of P10,000.00 and with no evidence on the cost of distribution, the net profits amount to only P6,000.00. This net profit of P6,000.00 should be divided between the petitioner and the private respondent. And since only P4,000.00 was used by the petitioner in printing the 2,000 copies, the remaining P6,000.00 should therefore be returned to the private respondent.

Relative to the second alleged error, the petitioner submits that the award of P8,000.00 as Pecson's supposed commission has no justifiable basis in law.

Again, we agree with the petitioner.

The partnership agreement stipulated that the petitioner would give the private respondent a monthly commission of P1,000.00 from April 15, 1971 to December 15, 1971 for a total of eight (8) monthly commissions. The agreement does not state the basis of the commission. The payment of the commission could only have been predicated on relatively extravagant profits. The parties could not have intended the giving of a commission in spite of loss or failure of the venture. Since the venture was a failure, the private respondent is not entitled to the P8,000.00 commission.

Anent the third assigned error, the petitioner maintains that the respondent Court of Appeals erred in holding him liable to the private respondent in the sum of P7,000.00 as a supposed return of investment in a magazine venture.

In awarding P7,000.00 to the private respondent as his supposed return of investment in the "Voice of the Veterans" magazine venture, the respondent court ruled that:

x x x x x x x x

"x x x Moran admittedly signed the promissory note of P20,000 in favor of Pecson. Moran does not question the due execution of said note. Must Moran therefore pay the amount of P20,000? The evidence indicates that the P20,000 was assigned by Moran to cover the following:

"(a) P7,000 - the amount of the PNB check given by Pecson to Moran representing Pecson's investment in Moran's other project (the publication and printing of the 'Voice of the Veterans');

"(b) P10,000 - to cover the return of Pecson's contribution in the project of the Posters;

"(c) P3,000 - representing Pecson's commission for three months (April, May, June, 1971).

Of said P20,000 Moran has to pay P7,000 (as a return of Pecson's investment for the Veterans' project, for this project never left the ground). x x x"

As a rule, the findings of facts of the Court of Appeals are final and conclusive and cannot be reviewed on appeal to this Court (*Amigo v. Teves*, 96 Phil. 252), provided they are borne out by the record or are based on substantial evidence (*Alsua-Betts v. Court of Appeals*, 92 SCRA 332). However, this rule admits of certain exceptions. Thus, in *Carolina Industries Inc. v. CMS Stock Brokerage, Inc., et al*, (97 SCRA 734), we held that

this Court retains the power to review and rectify the findings of fact of the Court of Appeals when (1) the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd and impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are con-trary to the admissions of both the appellant and the appellee.

In this case, there is misapprehension of facts. The evidence of the private respondent himself shows that his investment in the "Voice of Veterans" project amounted to only P3,000.00. The remaining P4,000.00 was the amount of profit that the private respondent expected to receive.

The records show the following exhibits –

"E - Xerox copy of PNB Manager's Check No. 234265 dated March 22, 1971 in favor of defendant. Defendant admitted the authenticity of this check and of his receipt of the proceeds thereof (t.s.n., pp. 3-4, Nov. 29, 1972). This exhibit is being offered for the purpose of showing plaintiff's capital investment in the printing of the 'Voice of the Veterans' for which he was promised a fixed profit of P8,000. This invest-ment of P6,000.00 and the promised profit of P8,000 are covered by defendant's promissory note for P14,000 dated March 31, 1971 marked by defendant as Exhibit 2 (t.s.n., pp. 20-21, Nov. 29, 1972), and by plaintiff as Exhibit P. Later, defendant returned P3,000.00 of the P6,000.00 investment thereby propor-tionately reducing the promised profit to P4,000. With the balance of P3,000 (capital) and P4,000 (promised profit), defendant signed and executed the promissory note for P7,000 marked Exhibit 3 for the defendant and Exhibit M for plaintiff. Of this P7,000, defendant paid P4,000 representing full return of the capital investment and P1,000 partial payment of the promised profit. The P3,000 balance of the promised profit was made part consideration of the P20,000 promis-sory note (t.s.n., pp. 22-24, Nov. 29, 1972). It is, therefore, being pre-sented to show the consideration for the P20,000 promissory note.

"F - Xerox copy of PNB Manager's check dated May 28, 1971 for P7,000 in favor of defendant. The authenticity of the check and his receipt of the proceeds thereof were admitted by the defendant (t.s.n., pp. 3-4, Nov. 29, 1972). This P7,000 is part consideration, and in cash, of the P20,000 promissory note (t.s.n., p. 25, Nov. 29, 1972), and it is being presented to show the consideration for the P20,000 note and the existence and validity of the obligation.

x x x x x x x x

"L - Book entitled 'Voice of the Veterans' which is being offered for the purpose of showing the subject matter of the other partnership agreement and in which plaintiff invested the P6,000 (Exhibit E) which, together with the promised profit of P8,000 made up for the con-sideration of the P14,000 promissory note (Exhibit 2; Exhibit P). As ex-plained in connection with Exhibit E, the P3,000 balance of the promised profit was later made part considera-tion of the P20,000 promissory note.

"M - Promissory note for P7,000 dated March 30, 1971. This is also defendant's Exhibit 3. This document is being offered for the purpose of further showing the transaction as explained in connection with Exhibits E and L.

"N - Receipt of plaintiff dated March 30, 1971 for the return of his P3,000 out of his capital investment of P6,000 (Exh. E) in the P14,000 promissory note (Exh. 2; P). This is also defendant's Exhibit 4. This document is being offered in support of plaintiff's ex-planation in connection with Exhibits E, L, and M to show the transaction mentioned therein.

x x x x x x x x

"P - Promissory note for P14,000.00. This is also defendant's Exhibit 2. It is being offered for the purpose of showing the transaction as explained in connection with Exhibits E, L, M, and N above."

Explaining the above-quoted exhibits, respondent Pecson testified that:

"Q During the pre-trial of this case, Mr. Pecson, the defendant presented a promissory note in the amount of P14,000.00 which has been marked as Exhibit 2. Do you know this promissory note?

"A Yes, sir.

"Q What is this promissory note, in connection with your transaction with the defendant?

"A This promissory note is for the printing of the 'Voice of the Veterans'.

"Q What is this 'Voice of the Veterans', Mr. Pecson?

"A It is a book."

(T.S.N., p. 19, Nov. 29, 1972)

"Q And what does the amount of P14,000.00 indicated in the promissory note, Exhibit 2, represent?

"A It represents the P6,000.00 cash which I gave to Mr. Moran, as evidenced by the Philippine National Bank Manager's check and the P8,000.00 profit assured me by Mr. Moran which I will derive from the printing of this 'Voice of the Veterans' book.

"Q You said that the P6,000.00 of this P14,000.00 is covered by a Manager's check. I show you Exhibit E, is this the Manager's check that you mentioned?

"A Yes, sir.

"Q What happened to this promissory note of P14,000.00 which you said represented P6,000.00 of your investment and P8,000.00 promised profits?

"A Later, Mr. Moran returned to me P3,000.00 which represented one-half (1/2) of the P6,000.00 capital I gave to him.

"Q As a consequence of the return by Mr. Moran of one-half (1/2) of the P6,000.00 capital you gave to him, what happened to the promised profit of P8,000.00?

"A It was reduced to one-half (1/2) which is P4,000.00.

"Q Was there any document executed by Mr. Moran in connection with the Balance of P3,000.00 of your capital investment and the P4,000.00 promised profits?

"A Yes, sir, he executed a promissory note.

"Q I show you a promissory note in the amount of P7,000.00 dated March 30, 1971 which for purposes of identification I request the same to be marked as Exhibit M. . .

Court

Mark it as Exhibit M.

"Q (continuing) is this the promissory note which you said was executed by Mr. Moran in connection with your transaction regarding the printing of the 'Voice of the Veterans'?"

"A Yes, sir.

(T.S.N., pp. 20-22, Nov. 29, 1972).

"Q What happened to this promissory note executed by Mr. Moran, Mr. Pecson?

"A Mr. Moran paid me P4,000.00 out of the P7,000.00 as shown by the promissory note.

"Q Was there a receipt issued by you covering this payment of P4,000.00 in favor of Mr. Moran?

"A Yes, sir."

(T.S.N., p. 23, Nov. 29, 1972).

"Q You stated that Mr. Moran paid the amount of P4,000.00 on account of the P7,000.00 covered by the promissory note, Exhibit M. What does this P4,000.00 covered by Exhibit N represent?

"A This 4,000.00 represents the P3,000.00 which he has returned of my P6,000.00 capital investment and the P1,000.00 represents partial Payment of the P4,000.00 profit that was promised to me by Mr. Moran.

"Q And what happened to the balance of P3,000.00 under the promissory note, Exhibit M?

"A The balance of P3,000.00 and the rest of the profit was applied as part of the consideration of the promissory note of P20,000.00."

(T.S.N. pp. 23-24, Nov. 29, 1972).

The respondent court erred when it concluded that the project never left the ground because the project did take place. Only it failed. It was the private respondent himself who presented a copy of the book entitled "Voice of the Veterans" in the lower court as Exhibit "L". Therefore, it would be error to state that the project never took place and on this basis decree the return of the private respondent's investment.

As already mentioned, there are risks in any business venture and the failure of the undertaking cannot entirely be blamed on the managing partner alone, specially if the latter exercised his best business judgment, which seems to be true in this case.

In view of the foregoing, there is no reason to pass upon the fourth and fifth assignments of errors raised by the petitioner. We likewise find no valid basis for the grant of the counterclaim.

WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals (now Intermediate Appellate Court) is hereby SET ASIDE and a new one is rendered ordering the petitioner Isabelo Moran, Jr., to pay private respondent Mariano Pecson SIX THOUSAND (P6,000.00) PESOS representing the amount of the private respondent's contribution to the partnership but which remained unused; and THREE THOUSAND (P3,000.00) PESOS representing one-half (1/2) of the net profits gained by the partnership in the sale of the two thousand (2,000) copies of the posters, with interests at the legal rate on both amounts from the date the complaint was filed until full payment is made.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

De La Fuente, J., no part.

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