

JOSE CHING SUI YONG, PETITIONER, VS. INTERMEDIATE APPELLATE COURT (THIRD CIVIL CASES DIVISION) AND INTERCONTINENTAL DISTRIBUTORS (P.I.) CORPORATION, ROBERTO SUAREZ, AND INTERCON...

G.R. No. 64398. November 06, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari of the decision of the respondent Intermediate Appellate Court (now Court of Appeals) in AC-G.R. CV No. 58527, dated 14 June 1983[1] affirming in toto the decision of the lower court rendered in favor of private respondents.

The antecedent facts that gave rise to this case are as follows:

Petitioner bought from a certain Norberto Concepcion for the total sum of P75,000.00 seven (7) foreign cinematographic films, as evidenced by four (4) receipts of payment duly signed by said Norberto Concepcion who was allegedly the authorized agent and representative of private respondent Intercontinental Film Distributors (P.I.) Corporation and its managing director, respondent Roberto Suarez.

It was stated in the said receipts that private respondents Intercontinental Film Distributors (P.I.) Corporation (Intercontinental (P.I.), for brevity) and Roberto Suarez agreed that all the seven (7) films would be sent and delivered directly to petitioner upon their arrival in the Philippines. However, the films were not delivered to petitioner despite repeated demands, as a result of which, the latter filed an action for replevin with damages before the Court of First Instance of Rizal, Branch XXII, docketed as Civil Case No. 12578.[2]

Upon petitioner's filing of the necessary bond in the amount of P150,000.00, the court a quo issued a writ of seizure ordering the Sheriff of Manila to take immediate possession of the seven (7) films. Six (6) films were seized by the Sheriff of Manila from the Board of Censors, while the seventh film was seized by Special Sheriff Gregorio Guido. All the seven (7) cinematographic films had been delivered by Intercontinental (P.I.) to the Board of Censors prior to their seizure.

Informed of the seizure of the seven (7) films by the Sheriffs, Intercontinental Film Distributors (H.K.) Ltd. (Intercontinental (H.K.), for brevity) filed a third-party claim, alleging ownership and asserting the right to possess the said seven (7) cinematographic films, and stating in its claim that the value of the said films was P250,000.00. Notified by the Sheriff of the third-party claim, petitioner filed an ex-parte motion to quash the third-party claim and for the delivery of the said films to him (petitioner), instead of filing an indemnity bond as required by the Sheriff. The ex-parte motion was granted and the films were delivered to the petitioner. Subsequently, Intercontinental (H.K.) filed a motion praying the Court that it be allowed to intervene in the case as party defendant, which motion was granted. It did intervene as defendant-intervenor and filed its answer to the complaint.

After trial on the merits, the court a quo dismissed the complaint and set aside the writ of seizure it had issued earlier. The dispositive part of the lower court's decision,[3] which respondent appellate court later affirmed in toto reads as follows:

“WHEREFORE, judgment is rendered:

1. Dismissing plaintiff's complaint, and the writ of seizure issued by this Court in favor of the plaintiff is hereby set aside;
2. Ordering plaintiff to return to defendants and intervenor the seven (7) cinematographic films, namely, Venus in Furs; Girl with Hungry Eyes; Free Love Confidential, Cool It Baby; Mondo Mod; Secret Sex Lives of Romeo and Juliet; Mantis in Lace, in the same condition as they were taken by and delivered to plaintiff on December 22, 1969 and in the event that delivery cannot be made, plaintiff shall pay defendants and intervenor the sum of P250,000.00 representing the value of said seven (7) cinematographic films; and
3. Sentencing plaintiff to pay defendants and defendant-intervenor the sum of P10,000.00 a day as damages commencing from December 23, 1969 until the aforesaid seven (7) cinematographic films are delivered or returned to defendants and defendant-intervenor or the sum of P250,000.00 is fully paid to defendants and defendant-intervenor, and to pay further the amount of P10,000.00 by way of attorney's fees.

With costs of suit against the plaintiff.

SO ORDERED.”

As already stated, the Court of Appeals affirmed the above judgment in its entirety. Not satisfied, petitioner interposed the present petition for review, raising the following issues:

- “(a) Whether or not the plaintiff has a valid cause of action against the defendants and the defendant-intervenor;
- (b) whether or not Norberto Concepcion is the authorized agent and representative of the defendant Intercontinental Film Distributors (P.I.) Corporation and its Managing Director, defendant Roberto Suarez;
- (c) whether or not the award of damages of P10,000.00 a day commencing from December 23, 1969 until the aforesaid seven (7) cinematographic films are delivered or returned to defendants and defendant-intervenor or the sum of P250,000.00 is fully paid to defendants and defendant-intervenor; and to pay further the amount of P10,000.00 by way of attorney's fees, are supported by evidence and the law on the matter.”[4]

At the outset, it would appear that the above-stated issues involve a review mainly of factual findings of respondent appellate court. We have repeatedly held that in a petition for review on certiorari only legal questions should be raised before this Court and that findings of fact of the Court of Appeals are conclusive on the parties and on this Court, absent any showing of grave error or abuse of discretion.[5]

We note further that the issues raised and the arguments adduced by petitioner in the present petition for review are reiterations of those submitted by him to the Court of Appeals. The first two (2) issues were resolved by the appellate court - to which we agree - in this wise:

“A study of the evidence viz a viz (sic) the arguments supporting the errors imputed to the trial court in its decision appealed from convinces Us that the trial court did not err in holding ‘the plaintiff-appellant as plainly has no cause of action against defendants and defendant-intervenor’ as it found that Norberto Concepcion was not the duly authorized agent or representative of the Intercontinental Film Distributors (PI) Corporation and Roberto Suarez, the Managing Director, (who) denied having authorized Norberto Concepcion to enter into contract with the plaintiff-appellant.

Let it be admitted that the cause of action of the plaintiff-appellant in his complaint for replevin (to take possession of the seven cinema-tographic films) is based on the alleged sales of the films in question to plaintiff-appellant by defendants thru Norberto Concepcion for the total sum of P75,000 as evidenced by Exhibits 'A', 'B', 'C' and 'D' and the alleged agency instituted by Roberto Suarez in favor of Norberto Concepcion as shown by said Exhibits.

The trial court, however, found and We agree that plaintiff-appellant failed to prove that Norberto Concepcion was the duly authorized agent or representative of the Intercontinental Films Distributors (PI) Corporation and Roberto Suarez. In fact, the lower court went further stating that Exhibits 'A', 'B', 'C' and 'D' are fictitious contracts, a forgery undertaken merely to promote the scheme of the plaintiff-appellant to take possession of the cinematographic films in question. On the other hand, the Intercontinental Films Distributors (H.K.) Ltd., intervenors, has established that it owns the said films. x x x.”[6]

We agree with the foregoing findings and conclusions. As private respondents correctly observed, despite petitioner’s claim that he paid Norberto Concepcion, the alleged agent of Roberto Suarez, the sum of P75,000.00 as evidenced by the four (4) receipts of payment, and despite the trial court’s suggestion that Norberto Concepcion be included as a defendant, petitioner failed to implead said Norberto Concepcion. Neither was Concepcion presented as a witness. Thus, the court a quo correctly resolved that:

“x x x. The failure of Concepcion to testify and clear the doubt that surrounded the alleged execution by Suarez of the receipt Exhibit E, considerably weakened the claim of plaintiff that defendants and defendant-intervenor sold to him the films in question for which Concepcion was duly authorized by defendant and intervenor, and the proceeds of the sale was later turned allegedly over by Concepcion to Suarez. x x x.”[7]

In short, the failure of petitioner to produce the person to whom he allegedly paid P75,000.00 for the seven (7) films, rendered his claim untenable. For, when a party has it in his possession or power to produce the best evidence of which the case in its nature is susceptible and withholds it, the fair presumption is that the evidence is withheld for some sinister motive and that its production would thwart his evil or fraudulent purpose.[8]

However, we resolve the third issue raised by petitioner, in his favor.

The sole basis for the award of damages against the petitioner is the alleged unrealized profits of private respondents for the non-screening of the seven (7) films. We believe that respondent court committed grave abuse of discretion in arriving at the amount of P10,000.00 a day as unrealized profits suffered by private respondents due to the filing of the present action by the petitioner. As correctly averred by petitioner, the films had yet to be passed by the Board of Censors and being “bold” or so-called “bomba” films, there was the probability that some scenes therein would have been cut or censored or the films totally banned, as in the case of one of the films.

Besides, no document or proof was presented to prove that private respondents really lost such amount daily for non-exhibition of the films to the public by reason of the action instituted by petitioner. The amount of P10,000.00 a day as alleged unrealized profit was arrived at by mere speculation and conjecture by respondent court. Hence, the award of damages for the anticipated loss of profits is unwarranted.

It is a settled rule that in order for damages to be recovered, the best evidence obtainable by the injured party must be presented.[9] Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount thereof. If the proof is flimsy and unsubstantial, no damages will be awarded.[10]

WHEREFORE, the appealed decision is hereby **AFFIRMED** with the modification that the award of damages in

the amount of P10,000.00 a day for alleged unrealized profits is eliminated. Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Justice Mariano A. Zosa, with Justices B. S. de la Fuente, Jorge R. Coquia and Florelina Castro-Batolome concurring.

[2] Rollo, p. 32

[3] Penned by Judge Benjamin M. Aquino, Court of First Instance of Rizal, Branch XXII.

[4] Rollo, p. 14

[5] Director of Lands vs. Funtilas, G.R. No. 68533, May 23, 1986, 142 SCRA 57; Republic vs. Intermediate Appellate Court, G.R. No. 70594, October 10, 1986, 144 SCRA 705

[6] Rollo, pp. 45-46

[7] Ibid., p. 49

[8] Pamantasan ng Lungsod ng Maynila vs. Court of Appeals, 140 SCRA 22; People vs. Pacnis, 165 SCRA 609

[9] Seaman Carrier, Inc. vs. GTI Sportswear Corp., G.R. No. 62130, September 28, 1984, 132 SCRA 308

[10] Dee Hua Liong Electrical Equipment Corp. vs. Reyes, G.R. No. 72182, November 25, 1986, 145 SCRA 713

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