

VIRGINIA FRANCO, PETITIONER, VS. THE HON. INTERMEDIATE APPELLATE COURT AND ALEJANDRO D. ALMENDRAS, RESPONDENTS.

G.R. No. 66825. October 11, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The petitioner, Virginia Franco, was employed by former Senator Alejandro Almendras (hereafter “Almendras”) on August 19, 1973 to manage the sale, disposal, and marketing of the fish products of the Almendras Fishing Industry, a single proprietorship of Almendras. She was given a monthly salary of P1, 500 plus an incentive pay of one percent (1%) of the gross sales.

On February 15, 1974, she and Almendras entered into a partnership named ADA CONSIGNMENT to engage in the business of receiving on consignment from suppliers, milkfish and other kinds of fish for sale to retailers in consideration of a 4% fee or commission for the partnership. They further stipulated that Almendras would provide the capital of P50,000 for the operation of the business, and the petitioner, as industrial partner, would furnish her skill, know-how, and industry. The profits were to be divided equally between them. The partnership was to exist for two years, but it could be terminated earlier upon the violation of any of its terms by either of the partners, plus payment of P5, 000 as damages by the guilty partner.

On January 2, 1972, Almendras terminated the services of the petitioner as manager of Almendras Fishing Industry, as well as their partnership which had existed for only ten (10) months.

On April 8, 1975, petitioner filed a complaint in the Court of First Instance of Rizal (Pasig) for Accounting and Damages. She asked for an accounting of the gross sales of Almendras Fishing Industry to determine her one percent (1%) incentive pay from the gross sales, which she estimated at no less than P3,500,000. With respect to the operation of their partnership, ADA CONSIGNMENT, she alleged that during its ten-month operation, the venture generated gross sales of P1,400,000 from which she was entitled to a four percent (4%) share as commission. She asked for an accounting of the two ventures because she had no access to the books, record, and funds of the two businesses, Almendras having appointed a treasurer-cashier for the business.

Almendras denied the allegations of the complaint and set up a counterclaim for monies due ADA CONSIGNMENT and Almendras Fishing Industry, which the petitioner allegedly misappropriated. He also demanded the return to him of certain implements and fixtures used in the business, or their value. He also demanded payment of damages, the penalty provided in the partnership agreement, and attorney’s fees. Petitioner denied the allegations of the counterclaim.

The Court directed the plaintiff, now petitioner, to designate an accountant to examine the books of accounts in the possession of the defendant and the parties agreed that the result of such examination, as well as the report prepared by defendant’s accountant, would serve as basis for an amicable settlement of the case.

The pre-trial was reset several times because petitioner's accountant was not ready yet. The Court reset the pre-trial conference for the last time on September 3, 1976 with notice to both parties.

On that date, however, neither the petitioner nor her counsel appeared. Upon oral motion of the defendant, the Court declared the petitioner non-suited.

On September 28, 1976, petitioner asked the court to order the defendant to produce the books of account, but the motion was declared moot as petitioner had already been non-suited. Defendant was allowed to present evidence in support of his counterclaim on October 4, 1976, and the case was submitted for decision on the basis of said evidence.

On November 11, 1976, petitioner filed a motion for reconsideration of the Order declaring her non-suited but to no avail.

On January 25, 1977, the Court of First Instance of Pasig rendered a decision for the defendant, the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the Court hereby renders judgment in favor of the defendant and against the plaintiff, to wit:

"(1) Plaintiff is ordered to pay defendant the sum of P70,747.35 representing the balance due from customers of the 'Almendras Fishing Industry;'

"(2) Plaintiff is ordered to return to defendant the following furniture and equipment: One (1) steel cabinet valued at P350.00; Two (2) office tables, P300.00; Two (2) chairs, P150.00; One (1) sofa bed, P200.00; Two (2) benches, P20.00; Two (2) scales, P2,000.00; Two hundred (200) 'baneras,' P3,500.00, having a total value of P9,090.00. In the event, plaintiff cannot return all or any piece thereof, on account of loss or destruction, plaintiff is ordered to pay defendant their price or that of any piece thereof as above listed;

"(3) Plaintiff is ordered to pay defendant the sum of Five Thousand Pesos (P5,000.00) as liquidated damages (penalty) and the sum of Fifteen Thousand Pesos (P15,000.00) as attorney's fees;

"(4) Plaintiff is ordered to pay the costs; and

"(5) The business or agency under the name 'ADA Consignment' entered into by the plaintiff and defendant is hereby declared dissolved.

"SO ORDERED." (pp. 53-54, Record on Appeal; p. 38, Rollo.)

Petitioner appealed to the Court of Appeals which modified the trial court's decision by eliminating the liquidated damages and reducing the attorney's fees to P10,000.

Franco filed this petition for review on the ground that the Court of Appeals erred:

1. in upholding the trial court's order declaring her non-suited;
2. in giving probative value to defendant's Exhibit "3" in support of the counterclaim; and
3. in affirming the awards in favor of the defendant.

The petition has no merit.

The petitioner was properly declared non-suited. As observed by the Court of Appeals:

"The records show that plaintiff and counsel took it on themselves to be absent from the September 3, 1976

pre-trial on three grounds - (1) that plaintiff was ill; (2) that counsel had another case to attend to; and (3) that, anyway, the accountant was present to inform the court that the report on reconciliation of amounts would not be submitted because of defendant's refusal to show the books of account.

"The proper thing to do was to file a motion to postpone the pre-trial, assuming the truth of the statements that plaintiff was ill and that counsel had another case to attend to. This plaintiff did not do, obviously on the assumption that the presence of the accountant was enough. It is clear to Us that both the plaintiff and her counsel were guilty at least of disrespect to the Court. Having lapsed into the error of not filling a motion for postponement on grounds, one of which could have some validity, they committed a yet bigger one in delegating to the accountant the duty to appear for them. Obviously, even if the accountant's presence was made known to the Court, matters could not have been set right, for the simple reason that the accountant is not a party to the case." (p. 29, Rollo.)

The purpose of Section 2, Rule 20 of the Rules of Court is to ensure the appearance of the parties at the pre-trial conference (*Junco vs. Court of Appeals*, G.R. No. 78051, November 8, 1989). Since the failure of the petitioner to appear at the pre-trial was not due to fraud, accident, mistake or excusable negligence, the appellate court did not err in upholding the trial court's nolle prosequi order against her.

The second and third assignments of error involve factual issues. Whether or not the petitioner is liable for the sum of P70,747.35 found by the auditor received by the petitioner from customers of Almendras Fishing Industry, and whether or not the other monetary awards are supported by the evidence, are factual issues which this Court is disinclined to review except under special circumstances which are not present in this case. The general rule is that factual findings of the lower courts are entitled to great weight and respect (*Manahan vs. People*, 167 SCRA 1; *People vs. Alpetche*, 168 SCRA 670).

WHEREFORE, the petition for review is denied and the appealed decision of the Court of Appeals is affirmed with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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