

EDWARD A. KELLER & CO., LTD., PETITIONER-APPELLANT, VS. COB GROUP MARKETING, INC., JOSE E. BAX, FRANCISCO C. DE CASTRO, JOHNNY DE LA FUENTE, SERGIO C. ORDOÑEZ, TRINIDAD C. ORDOÑ...

G.R. No. 68097. January 16, 1986

Ponente: AQUINO, C.J.

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AQUINO, C.J.:

This case is about the liability of a marketing distributor under its sales agreements with the owner of the products. The petitioner presented its evidence before Judges Castro-Bartolome and Benipayo. Respondents presented their evidence before Judge Tamayo who decided the case.

A review of the record shows that Judge Tamayo acted under a misapprehension of facts and his findings are contradicted by the evidence. The Appellate Court adopted the findings of Judge Tamayo. This is a case where this Court is not bound by the factual findings of the Appellate Court. (See *Director of Lands vs. Zartiga*, L-46068-69, September 30, 1982, 117 SCRA 346, 355).

Edward A. Keller & Co., Ltd. appointed COB Group Marketing, Inc. as exclusive distributor of its household products, Brite and Nuvan, in Panay and Negros, as shown in the sales agreement dated March 14, 1970 (32-33 RA). Under that agreement Keller sold on credit its products to COB Group Marketing.

As security for COB Group Marketing's credit purchases up to the amount of P35,000, one Asuncion Manahan mortgaged her land to Keller. Manahan assumed solidarily with COB Group Marketing the faithful performance of all the terms and conditions of the sales agreement (Exh. D).

In July, 1970 the parties executed a second sales agreement whereby COB Group Marketing's territory was extended to Northern and Southern Luzon. As security for the credit purchases up to P25,000 of COB Group Marketing for that area, Tomas C. Lorenzo, Jr. and his father Tomas, Sr. (now deceased) executed a mortgage on their land in Nueva Ecija. Like Manahan, the Lorenzos were solidarily liable with COB Group Marketing for its obligations under the sales agreement (Exh. E).

The credit purchases of COB Group Marketing, which started on October 15, 1969, lasted up to January 22, 1971. On May 8, the board of directors of COB Group Marketing were apprised by Jose E. Bax, the firm's president and general manager, that the firm owed Keller about P179,000. Bax was authorized to negotiate with Keller for the settlement of his firm's liability (Exh. I, minutes of the meeting).

On the same day, May 8, Bax and R. Oefeli of Keller signed the conditions for the settlement of COB Group Marketing's liability, Exhibit J, reproduced as follows:

"This formalizes our conditions for the settlement of C.O.B.'s account with Edward Keller Ltd.

- Increase of mortgaged collaterals to the full market value (estimated by Edak at P90,000.00).

- Turn-over of receivables (estimated outstandings P70,000.00 to P80,000.00).
- Turn-over of 4 (four) trucks for outright sale to Edak, to be credited against C.O.B.'s account.
- Remaining 8 (eight) trucks to be assigned to Edak. C.O.B. will continue operation with these 8 trucks. They will be returned to C.O.B. after settlement of full account.
- C.O.B. has to put up securities totalling P200,000.00. P100,000.00 has to be liquidated within one year. The remaining P100,000.00 has to be settled within the second year.
- Edak will agree to allow C.O.B. to buy goods to the value of the difference between P200,000.00 and their outstandings, provided C.O.B. is in a position to put up securities amounting to P200,000.00

Discussion held on May 8, 1971."

Twelve days later, or on May 20, COB Group Marketing, through Bax, executed two second chattel mortgages over its 12 trucks (already mortgaged to Northern Motors, Inc.) as security for its obligation to Keller amounting to P179,185.16 as of April 30, 1971 (Exh. PP and QQ). However, the second mortgages did not become effective because the first mortgagee, Northern Motors, did not give its consent. But the second mortgages served the purpose of being admissions of the liability of COB Group Marketing to Keller.

Two stockholders of COB Group Marketing, Moises P. Adao and Tomas C. Lorenzo, Jr., in a letter dated July 24, 1971 to Keller's counsel, proposed to pay Keller P5,000 on November 30, 1971 and thereafter every thirtieth day of the month for three years until COB Group Marketing's mortgage obligation had been fully satisfied. They also proposed to substitute the Manahan mortgage with a mortgage on Adao's lot at 72 7th Avenue, Cubao, Quezon City (Exh. L).

These pieces of documentary evidence are sufficient to prove the liability of COB Group Marketing and to justify the foreclosure of the two mortgages executed by Manahan and Lorenzo (Exh. D and E).

Section 22, Rule 130 of the Rules of Court provides that the act, declaration or omission of a party as to a relevant fact may be given in evidence against him "as admissions of a party".

The admissions of Bax are supported by the documentary evidence. It is noteworthy that all the invoices, with delivery receipts, were presented in evidence by Keller, Exhibits KK-1 to KK-277-a and N to N-149-a, together with a tabulation thereof, Exhibit KK, covering the period from October 15, 1969 to January 22, 1971. Victor A. Mayo, Keller's finance manager, submitted a statement of account showing that COB Group Marketing owed Keller P184,509.60 as of July 31, 1971 (Exh. JJ). That amount is reflected in the customer's ledger, Exhibit M.

On the other hand, Bax, although not an accountant, presented his own reconciliation statements wherein he showed that COB Group Marketing overpaid Keller P100,596.72 (Exh. 7 and 8). He claimed overpayment although in his answer he did not allege at all that there was an overpayment to Keller.

The statement of the Appellate Court that COB Group Marketing alleged in its answer that it overpaid Keller P100,596.72 is manifestly erroneous first, because COB Group Marketing did not file any answer, having been declared in default, and second, because Bax and the other stockholders, who filed an answer, did not allege any overpayment. As already stated, even before they filed their answer, Bax admitted that COB Group Marketing owed Keller around P179,000 (Exh. I).

Keller sued on September 16, 1971 COB Group Marketing, its stockholders and the mortgagors, Manahan and Lorenzo.

COB Group Marketing, Trinidad C. Ordoñez and Johnny de la Fuente were declared in default (290 Record on

Appeal).

After trial, the lower court (1) dismissed the complaint; (2) ordered Keller to pay COB Group Marketing the sum of P100,596.72 with 6% interest a year from August 1, 1971 until the amount is fully paid; (3) ordered Keller to pay P100,000 as moral damages to be allocated among the stockholders of COB Group Marketing in proportion to their unpaid capital subscriptions; (4) ordered the petitioner to pay Manahan P20,000 as moral damages; (5) ordered the petitioner to pay P20,000 as attorney's fees to be divided among the lawyers of all the answering defendants and to pay the costs of the suit; (6) declared void the mortgages executed by Manahan and Lorenzo and the cancellation of the annotation of said mortgages on the Torrens titles thereof, and (7) dismissed Manahan's cross-claim for lack of merit.

The petitioner appealed. The Appellate Court affirmed said judgment except the award of P20,000 as moral damages which it eliminated. The petitioner appealed to this Court.

Bax and the other respondents quoted the six assignments of error made by the petitioner in the Appellate Court, not the four assignments of error in its brief herein. Manahan did not file any appellee's brief.

We find that the lower courts erred in nullifying the admissions of liability made in 1971 by Bax as president and general manager of COB Group Marketing and in giving credence to the alleged overpayment computed by Bax.

The lower courts not only allowed Bax to nullify his admissions as to the liability of COB Group Marketing but they also erroneously rendered judgment in its favor in the amount of its supposed overpayment in the sum of P100,596.72 (Exh. 8-A), in spite of the fact that COB Group Marketing was declared in default and did not file any counterclaim for the supposed overpayment.

The lower courts harped on Keller's alleged failure to thresh out with representatives of COB Group Marketing their "diverse statements of credits and payments". This contention has no factual basis. In Exhibit J, quoted above, it is stated by Bax and Keller's Oefeli that "discussion (was) held on May 8, 1971".

That means that there was a conference on the COB Group Marketing's liability. Bax in that discussion did not present his reconciliation statements to show overpayment. His Exhibits 7 and 8 were an afterthought. He presented them long after the case was filed. The petitioner regards them as "fabricated" (p. 28, Appellant's Brief).

Bax admitted that Keller sent his company monthly statements of accounts (20-21 tsn, September 2, 1976) but he could not produce any formal protest against the supposed inaccuracy of the said statements (22). He lamely explained that he would have to dig up his company's records for the formal protest (23-24). He did not make any written demand for reconciliation of accounts (27-28).

As to the liability of the stockholders, it is settled that a stockholder is personally liable for the financial obligations of a corporation to the extent of his unpaid subscription (*Vda. de Salvatierra vs. Garlitos*, 103 Phil. 757, 763; 18 CJS 1311-2).

While the evidence shows that, the amount due from COB Group Marketing is P184,509.60 as of July 31, 1971 or P186,354.70 as of August 31, 1971 (Exh. JJ), the amount prayed for in Keller's complaint is P182,994.60 as of July 31, 1971 (18-19 Record on Appeal). This latter amount should be the one awarded to Keller because a judgment entered against a party in default cannot exceed the amount prayed for (Sec. 5, Rule 18, Rules of Court).

WHEREFORE, the decisions of the trial court and the Appellate Court are reversed and set aside.

COB Group Marketing, Inc. is ordered to pay Edward A. Keller & Co., Ltd. the sum of P182,994.60 with 12% interest per annum from August 1, 1971 up to the date of payment plus P20,000 as attorney's fees.

Asuncion Manahan and Tomas C. Lorenzo, Jr. are ordered to pay solidarily with COB Group Marketing the sums of P35,000 and P25,000, respectively.

The following respondents are solidarily liable with COB Group Marketing up to the amounts of their unpaid subscription to be applied to the company's liability herein: Jose E. Bax, P36,000; Francisco C. de Castro, P36,000; Johnny de la Fuente, P12,000; Sergio C. Ordoñez, P12,000; Trinidad C. Ordoñez, P3,000; Magno C. Ordoñez, P3,000; Adoracion C. Ordoñez, P3,000; Tomas C. Lorenzo, Jr., P3,000 and Luz M. Aguilar-Adao, P6,000.

If after ninety (90) days from notice of the finality of the judgment in this case the judgment against COB Group Marketing has not been satisfied fully, then the mortgages executed by Manahan and Lorenzo should be foreclosed and the proceeds of the sales applied to the obligation of COB Group Marketing. Said mortgage obligations should bear six percent legal interest per annum after the expiration of the said 90-day period. Costs against the private respondents.

SO ORDERED.

Concepcion, Jr., (Chairman), Escolin, Cuevas, and Alampay, JJ. concur.
Abad Santos, J., no part.

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