

RENE E. CRISTOBAL, PETITIONER, VS. HON. COURT OF APPEALS, AND JESUS AGUIRRE, RESPONDENTS.

G.R. No. 83334. August 11, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review by certiorari of a decision of the Court of Appeals dated February 26, 1988 in CA G. R. CV No. 04070 entitled "Rene Cristobal vs. Jesus Aguirre," and a resolution of the same court dated May 4, 1988 denying the motion for reconsideration of the said decision.[1]

The antecedent facts are not disputed.

On April 30, 1985, petitioner filed a complaint for the collection of a sum of money against private respondent in the Court of First Instance of Manila alleging, among others, that on May 3, 1971, private respondent, by way of a Management and Service Agreement, retained the services of petitioner as his financial and management consultant: 1) to negotiate for a loan for the purpose of financing private respondent's steel drum manufacturing business and restructuring private respondent's overdue account with the Development Bank of the Philippines (DBP for short) and the Progressive Commercial Bank (PCB for brevity); and 2) to give professional advice and opinion and provide private respondent with pertinent data, studies, information and other services as may be necessary for the successful management of the business; and that for the consideration for such services, private respondent agreed to pay petitioner the following: P60,000.00, P30,000.00 of which shall be paid to petitioner upon release of the loan by a banking institution to respondent, and the balance to be paid in six (6) monthly installments of P5,000.00 per month; 15% of private respondent's net profit before income tax payable to the petitioner within thirty (30) days after the end of each fiscal period; and 15% of the total outstanding shares of the corporation to be organized by the private respondent to operate his steel drum manufacturing business. Petitioner further alleged that he devoted almost full time and effort for one (1) year for the purpose of seeking financial assistance for private respondent's steel drum manufacturing business and in preparing the corresponding studies and giving advice thereon to the private respondent; that as a result of his efforts, petitioner was able to negotiate and obtain for private respondent credit facilities with the First National City Bank (FNCB), amounting to P1,010,000.00 which was approved on January 28, 1972, which amount the private respondent availed of and that petitioner was able to negotiate for the restructuring of private respondent's accounts with the PCB and DBP which was approved on August 24, 1972, thus preventing foreclosure of private respondent's mortgaged property with the said banks. Finally, petitioner alleged that after the release to private respondent of his loan with the FNCB, the latter paid petitioner in April 1972 the sum of P5,000.00 and promised to pay the balance of P55,000.00 later; and that despite repeated demands by petitioner for the payment of the balance plus 15% share on the net profit, private respondent refused to pay the same. Petitioner prays for judgment ordering private respondent to pay petitioner the abovesaid sum of P55,000.00 plus interest thereon at the legal rate, 15% of the net profit due thereon and P50,000.00 as attorney's fees.

In his answer, private respondent denied petitioner's allegation and by way of special and affirmative defenses

alleged that the petitioner is not entitled to anything under the Management and Service Agreement and a special power of attorney attached thereto inasmuch as said instruments have never been effective considering that petitioner did not personally render any services in favor of private respondent; that the loans obtained from FNCB have been of no use in financing the steel drum manufacturing business and the restructuring of the old loans with the DBP and PCB; that the preparation of the financial requirements and project studies of defendant's business to meet the requirements of the above-named financial banks were done by private respondent inasmuch as the petitioner failed to prepare the same. By way of compulsory counterclaims, private respondent seeks damages, alleging that when he was confined in the hospital in April 1972, petitioner was hard-pressed for money and that petitioner was able to borrow P5,000.00 from him upon a promise to pay the same within a few months with interest at 12% per annum, which amount private respondent seeks to recover together with moral and exemplary damages and corrective damages and attorney's fees in the amount of P20,000.00.

On September 17, 1979, after trial on the merits, during which forty-seven (47) exhibits, twenty (20) for petitioner and twenty-seven (27) for private respondent, were admitted in evidence, the trial court rendered judgment for the private respondent and against the petitioner by dismissing the complaint as well as the private respondent's counterclaim for lack of merit.

The petitioner perfected his appeal therefrom, but before the elevation of the records of the case to the Court of Appeals, a fire on November 18, 1987 destroyed the sala of the trial court, including all the records of the case. On January 18, 1982, petitioner filed a petition for reconstitution of the records of the case under Act No. 3110 based on the reconstituted amended record on appeal, transcript of stenographic notes (TSN) and eleven (11) out of twenty (20) documentary exhibits which petitioner was able to reproduce prior to their submission to the trial court. The petition was denied by the trial court in an order dated February 25, 1983 in view of private respondent's objection to the approval thereof on the ground that the exhibits which were presented during the hearing have not been attached to the reconstitution and the parties failed to stipulate on their defenses in spite of the lapse of time given to them. Acting upon the motion for reconsideration of the aforesaid order, the trial court issued another order dated August 4, 1983 holding that Exhibits B to K, the record on appeal, and the TSN shall form the reconstituted records for the purpose of the appeal.

The petitioner filed his brief in the Court of Appeals. He enumerated the alleged errors committed by the trial court as follows:

"I

THE LOWER COURT ERRED IN NOT HOLDING THAT APPELLANT RENDERED THE SERVICES REQUIRED OF HIM UNDER THE MANAGEMENT AND SERVICE AGREEMENT.

II

THE DECISION OF THE LOWER COURT IS NOT SUPPORTED BY EVIDENCE, BOTH DOCUMENTARY AND TESTIMONIAL, ADDUCED DURING THE TRIAL OF THE CASE, AND/OR SAID DECISION IS (NOT) JUSTIFIED BY THE EVIDENCE.

III

THE LOWER COURT ERRED IN NOT HOLDING THAT APPELLANT IS ENTITLED TO THE REMUNERATIONS PROVIDED IN THE AFORESAID MANAGEMENT AND SERVICES AGREEMENT.

IV

THE DECISION IS CONTRARY TO LAW APPLICABLE ON THE MATTER."[2]

Without resolving the appeal on the merits, the Court of Appeals instead held that the reconstitution was not in order, in its decision dated February 26, 1988, ordered the decision vacated, without prejudice to the right of petitioner to file his action anew under Section 30 of Act No. 3110. A motion for reconsideration filed by petitioner was denied by the appellate court on May 4, 1988.

Hence this petition for review wherein the issues raised are as follows:

- "1. Whether the records of the instant case are sufficiently and properly reconstituted in accordance with the provisions of Act No. 3110 for purposes of appeal.
2. Whether the Court of Appeals could have rendered a decision on the merits of the case on the basis of the reconstituted records and the issues and questions raised by appellant and appellee in their respective briefs.
3. Whether petitioner has rendered the services required of him under the Management and Service Agreement."[3]

The petition is impressed with merit.

In considering the reconstitution of the records of the case as approved by the trial court to be insufficient to sustain the appeal, the appellate court made the following disquisition:

"At the outset, We find it necessary to pass upon the issue, suggested by appellee, of whether or not the reconstituted record of the case (by the order of the court a quo dated August 4, 1983, supra, only Exhibits 'B' to 'K', the transcript of stenographic notes and the reconstituted record on appeal shall constitute the reconstituted record for purposes of the appeal) is sufficient to sustain appellant's present appeal.

We answer this question in the negative in view of the following:

Appellant filed his petition for reconstitution of the records in this case under Act No. 3110 which provides for the procedure for the reconstitution of the records of pending judicial proceedings, inter alia. Sections 3 and 4 of this Act state:

'SEC. 3. The parties to civil cases, or their counsels, shall appear and file, within thirty days after having been notified in accordance with the next preceding section, an application for the reconstitution of the records in which they are interested, and the clerk of the court, upon receiving such application, shall send notice to all parties interested, or their counsels, of the day, hour, and place when the court will proceed to the reconstitution, requesting them to present, on said day and hour, and at said place, all copies of motions, decrees, orders, and other documents in their possession, having reference to the record or records to be reconstituted.' (Underscoring supplied.)

'SEC. 4. Civil cases pending trial shall be reconstituted by means of the copies presented and certified under oath as correct by the counsels or the parties interested. In case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the parties interested, which shall be reduced to writing and attached to the proper record.' (Underscoring supplied.)

In the case of *Carungcong vs. Cojuangco* (88 Phil. 527, 530-531) wherein an attempt at reconstitution of the judicial records of the case failed because of the inability of the parties to present copies of the documents constituting the record of the case or to file in lieu thereof a written agreement on the facts, pursuant to Section 4 of Act No. 3110, quoted above, it was held that the legal provision applicable to the situation is Section 30 of

the same Act, which reads:

'SEC. 30. When it shall not be possible to reconstitute a destroyed judicial record by means of the procedure established in this Act or for any reason not herein provided for, the interested parties may file their actions anew, upon payment of the proper fees, and such actions shall be registered as new actions and shall be treated as such.' (Underscoring supplied.)

The Court ruled that under the abovequoted provision where, and under the circumstances, making a reconstitution of the judicial records is a failure, the order of the lower court in said case decreeing that 'reconstitution was not in order or was improper' simply meant that Section 30 shall apply and appellant's plain recourse is to file an action and pay the proper fee, which action 'shall be registered as a new one and treated as such.'

'In this present case, it is clear that Section 30 of Act No. 3110 must have to apply because the two alternatives presented by Section 4 of the same Act, *supra*, had not been complied with. For while it is not disputed that there were all in all 47 exhibits admitted in evidence before the trial court, only 11 (Exhibits 'B' to 'K') had been reconstituted; and the parties or their respective counsels failed to and did not arrive at a written agreement on the facts.

What is more, from an examination of the complaint, the answer and the decision -- which form part of the reconstituted record on appeal -- and the appellant's brief, it appears that the exhibits which could not be reconstituted are 'of vital importance' to the result of the appeal. Thus, Exhibit 'A', the Management and Service Agreement, which is the very subject of the complaint, had not been reconstituted. Also, the statement of facts in appellant's brief reproduces the statement of facts of the trial court in its decision; and plainly, the trial court's statement of facts cites documents most of which had not been reconstituted. Likewise, appellant's assigned errors are based mainly on the said unreconstituted exhibits, namely, Exhibits 'A', 'M', 'N', 'O', 'P', 'Q', 'R' and 'S' and Exhibits to '1' to '26'. Resulting from the application of Section 30 of Act No. 3110 and the Carungcong precedent, *supra*, plaintiff-appellant's only recourse in order to recover on his claim is to file his action anew, which action shall be registered as a new one and treated as such.

The foregoing renders it unnecessary for present purposes for Us to resolve the questions raised by plaintiff-appellant in his assignment of errors. Indeed, even if this Court were inclined to do so, it does not find itself placed in a position to pass upon the said questions justly and equitably on the basis only of the reconstituted record. As already noted, the decision of the trial court being assailed cites and rests on documents not available to this Court in the reconstituted record; and the appellant in his appeal likewise seeks the reversal of the said decision on the basis of the documents which were adduced as exhibits before the trial court but which do not form part of the reconstituted record."^[4]

In applying Section 4 of Act No. 3110, the appellate court ruled that the parties should comply with the two alternative conditions provided therein, namely, submission of copies of the motion, decree, etc. of the civil case being reconstituted certified under oath as correct by the counsel or parties, or if a copy thereof which is of vital importance for the reconstitution of the record cannot be produced, then it may be replaced by an agreement on the facts entered into between the counsel or the parties interested which shall be reduced to writing and attached to the proper record.

In the first place, this procedure applies to cases pending trial. It cannot apply to this case where the trial is already terminated and a decision has been rendered.

In the second place, assuming it is also applicable in this case, there is no showing that the documents which were not submitted are of vital importance to the appeal. Thus, while it is true that Exhibit "A", the Management and Service Agreement, which is the very subject of the complaint, has not been reconstituted, its contents, terms and conditions as alleged in the complaint are admitted by private respondent. In fact, a copy of the same had been

reproduced in the petitioner's brief, the correctness of which is not questioned by private respondent.[5] Thus, the reconstitution of said agreement can be dispensed with.

Thirdly, the statement of facts of the trial court which is not disputed by the parties can very well be the basis of a decision of the case on the merits. While it may be true that in said statement the trial court refers to exhibits not reconstituted which were enumerated by the appellate court, there is, however, no showing that there is a need to produce and examine the said exhibits under the circumstances. On the contrary, a reading of the said statement of facts shows it is complete in itself. It is not assailed by the parties to be inadequate as in fact it was the basis of the appealed decision of the trial court. Hence, the production of the exhibits referred therein is obviously unnecessary.

And lastly, even assuming *arquendo* that said exhibits are of vital importance for the appeal in accordance with Section 4 of Act No. 3110 as cited by the appellate court, said statement of facts of the trial court which is not disputed may be considered as the very agreement on the facts between the counsel and the parties-in-interest as required by law.

The purpose of the reconstitution of the judicial records whether pending trial, after trial pending decision or pending appeal is to enable the court, the parties and their counsel to proceed with the case until its final determination based on the available record. The test is whether based on the reconstituted records the case may proceed when pending trial, or if after trial, the trial court can render a decision on the merits, and if pending appeal, the appellate court can resolve the appeal on the merits. If the answer is in the affirmative, then the reconstitution is proper and in order.

When as in this case what has been reconstituted is the record on appeal, the transcript of stenographic notes and eleven (11) out of forty (40) documentary exhibits, and the counsel and parties have no objections to the statement of facts of the trial court, the Court finds and so holds that there is a sufficient basis for the appeal to proceed.

Petitioner pleads a legitimate cause as he asserts that the filing of a new case as the appellate court proposed will not serve the cause of justice as he cannot possibly produce in a new trial the originals of the documents that were burned.

The appellate court relied on the ruling of this Court in *Gonzales de Carungcong vs. Cojuangco*[6] wherein the petition for reconstitution was filed when the parties failed to present any copies of motions, decrees, orders, and other documents in their possession in reference to the case. Thus, the plaintiff therein filed a written manifestation entitled "Statement of the Case Reconstituted" setting forth her version of the proceedings filed, the proceedings had, and the decision alleged to have been rendered in the case and asked that the record be reconstituted. This was opposed by defendant and denied by the court on November 6, 1946.

No appeal was taken from this order. Three (3) years later, the administratrix filed a reconstitution proceeding submitting a "complaint" which was a rehash of that previously rejected. This was opposed by the defendant and denied by the lower court.

On appeal to this Court, applying Section 30 of Act No. 3110, We ruled that under the circumstances, the reconstitution of judicial records is a failure and that the order of the lower court approving the reconstitution was improper. It simply meant that Section 30 shall apply and the appellant's plain recourse is to file an action and pay the proper fee which action "shall be registered as a new one and treated as such."

In the present case, eleven (11) out of twenty (20) documentary evidence had been submitted by petitioner together with the amended record on appeal and transcript of stenographic notes as the basis of petition for reconstitution, thus, the trial court approved the reconstitution. The facts in this case are different from those

obtaining in Gonzales de Carungcong.

There is no justification for applying Section 30 of Act No. 3110 in this case. It applies only when it is not possible to reconstitute a destroyed judicial record by means of the procedure established in the Act or for any reason not therein provided for. In this case enough records were reconstituted which can serve as sufficient basis to resolve the appeal.

What properly applies to this situation is Section 25 of Act No. 3110, as follows:

"Section 25. The records of civil actions, special proceedings, and registration and cadastral proceedings, which at the time of their destruction were ready to be sent to the Supreme Court of the Philippines on Appeal shall be reconstituted by means of an authentic copy of the bill of exceptions or record on appeal, which together with the reconstituted evidence, shall form the reconstituted record for the purpose of appeal." (underscoring supplied.)

Analogous and applicable to this case is Our ruling in *Grey vs. Insular Lumber Co.*:^[7]

"The case was pending presentation of the briefs when war broke out and part of the records was lost. At the hearing had in the lower court for the reconstitution of the missing exhibits, it turned out that, of 906 exhibits introduced by defendant, only 18 were reconstituted. Defendant moved that the decision of the trial court be declared without force and effect, reserving to plaintiff and defendant the right to institute such action as they may deem proper in the premises. Held: Where the findings of fact of the lower court stand in the main undisputed, and the only things to be reviewed are the conclusions drawn from those facts and the rulings made on the different contentions of the parties, and the issues and questions raised by both parties in their briefs may be passed upon without need of annulling the whole proceedings or instituting a new action, the appellate court may proceed with the determination of the issues raised in the appeal."

Now to the merits of the case. Rather than remand the record of the case to the appellate court for its resolution on the merits, it will be more just and will prevent any further delay if this Court should resolve the same now.

The undisputed statement of facts of the case is contained in the decision of the trial court as follows:

"The evidence of the plaintiff consists of several documents (Exhibits 'A', 'A-1', 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K', 'L', 'M', 'N', 'O', 'P', 'Q', 'R', 'S') and the oral testimony of the plaintiff who declared that he is a Management and Financial Consultant of several domestic and foreign companies; that he is a graduate of Management and Economics from the University of the East and has attended a special study in advance management in the Philippines sponsored by the Harvard University; that sometime in February or March of 1971, he came to know the defendant thru a friend; that on that occasion the defendant sought his help to stop the foreclosure of his (defendant's) assets by the DBP and by the PCB for overdue loan accounts of approximately P180,000.00, and to look for funds with which to settle said overdue loan accounts to buy equipment and raw materials, and to serve as working capital for the latter's steel drum manufacturing business; that after consulting with certain officials of said banks and after finding out that something could be done, he conveyed his findings to the defendant which culminated in the signing of said Management and Service Agreement on May 3, 1971; that he thereafter negotiated for a loan on behalf of the defendant with the First National Bank by preparing and submitting the loan application and all the necessary attachments, such as the project study consisting of the financial requirements of the project, petroleum capacity, schedule of dates of repayment, production capacity, cash-flow chart, etc. (Exhibit 'L'); that he was able to have a complete knowledge of defendant's financial status when he requested for, and the defendant furnished him with copies of his titles to his assets and other documents (Exhibits 'M', 'N', 'O', 'P', and 'Q'); and also a copy of defendant's statement of account with the DBP (Exhibits 'D' and 'E'); that as the FNCB was reluctant to grant the loan because of the inadequacy of the collateral of the defendant and his weak credit standing, he proposed to FNCB the possibility of obtaining a dollar funding abroad which will be deposited with FNCB, the

peso-equivalent of which will be loaned to the defendant; that as FNCB was amenable to said proposal, he left for abroad sometime in May, 1971, and contacted two companies in Europe, Van Leer in Amsterdam, and Comamet in Milan, but did not succeed in obtaining a dollar funding because of certain Central Bank restrictions and the refusal of the foregoing depositor of the dollar funds to accept the requirements of FNCB that the commercial risk of the peso-loan would be assumed by them, as contained in his letter to his officemates in Manila (Exhibits 'R' and 'R-1', also marked as Exhibits '19' and '19-A' for the defendant); that while in Europe, he received a letter from the defendant containing the information that PCB had given notice of foreclosure; that sometime in the end of August, 1971, he returned to the Philippines and resumed his follow-up of defendant's application for loan with the FNCB and also the restructuring of defendant's loans with DBP and PCB that after he had revised the loan application by reducing the funding requirement to a minimum, a loan in the amount of P660,000.00 was approved by FNCB on January 28, 1972 (Exhibit 'H'); that as a consequence, he was able to effect a reduction of the amount immediately payable to the bank from P68,622.71 to P11,133.73 and to obtain DBP's approval to contract a second mortgage for defendant's properties in favor of FNCB (Exhibit 'C'); that he also submitted to the DBP a market study on steel drums to convince the bank on the economic feasibility of defendant's business; that he again assisted the defendant in obtaining an additional credit accommodation with FNCB amounting to P400,000.00 when the balance of the original loan, after paying off defendant's outstanding loans with DBP and PCB, proved to be insufficient to put defendant's business on a sound operating basis; that he also assisted the defendant in negotiating for the roll-over of the latter's loan when he failed to meet his amortization with FNCB on the original loan; that after the release of the FNCB loan, he reported to FNCB in writing defendant's business by letter, dated April 12, 1972, which he signed in behalf of the defendant (Exhibit 'I'); that he was able to get an order from Getty Oil (Phils.) for 2,000 steel drums valued at P70,000.00 (Exhibit 'J'), a portion of which was assigned to FNCB to pay defendant's loan, (Exhibit 'K'); that in following-up defendant's loan application with FNCB and the restructuring of the latter's loan with DBP, he usually takes along the defendant so as to involve the latter in any important decision that had to be made, and in the process, he was able to obtain copies of communications to and from FNCB (Exhibits 'H', 'I', and 'K', and DBP Exhibits 'E', 'F' and 'C'); and that after he had thus performed his reciprocal obligations under the Management and Service Agreement (Exhibit 'A'), the defendant gave him P5,000.00 only and refused to pay the balance of P55,000.00.

Upon the other hand, the defendant does not deny that he engaged the services of the plaintiff as financial and management consultant, and that he admits the genuineness and due execution of the Management and Service Agreement (Exhibit 'A'); he however, claims that inasmuch as the plaintiff has not performed any service nor accomplished any of the items mentioned in said agreement, the latter is not entitled to any compensation.

The defendant also presented oral as well as documentary evidence. The first defense witness was Eduardo Toribio who declared that he is an employee of DBP as a Technical Analyst whose main duty is to evaluate the technical aspect of a project and to give assistance to clients of the bank without charging any fees; that he personally knows the plaintiff as a consultant; that he has never been connected nor worked with the plaintiff; and that he has never received any money, compensation, or fee from plaintiff.

Testifying on his behalf, the defendant declared that before the signing of the Management and Service Agreement (Exhibit 'A'), he and the plaintiff worked together and conferred with certain officials of the DBP and PCB for the restructuring of defendant's overdue accounts as a loan was being arranged with FNCB; that after ascertaining that FNCB would not grant a loan because of his inability to comply with certain bank requirements, the plaintiff manifested that one way to solve defendant's problem was to secure dollars from abroad from a foreign financier to which the defendant expressed conformity; that after he and the plaintiff had signed the Management and Service Agreement (Exhibit 'A'), and after he had executed a Special Power of Attorney in favor of the plaintiff (Exhibits '21' and '21-A'), the latter left for abroad to secure said dollars; that he alone successfully negotiated for a loan with the FNCB (See Exhibit '4', also marked as 'H'), and thereafter also succeeded in the restructuring of his accounts with DBP and PCB after having submitted the required documents, studies, information, and the like (Exhibits 'L', '1-A', '2', '3', '4', '5', '6', '7', '8', '9', '10', '11', '12', '13',

'14', '15', '16' and '17') upon knowing that the plaintiff failed to secure or bring in dollars from abroad; and that sometime in August, 1972, while he was sick and confined at the Marian Hospital, he gave a loan of P5,000.00 to the plaintiff who was then being pressed for payment by a certain motor company." [8]

In resolving the case in favor of the private respondent, the trial court made the following disquisition:

"The plaintiff contends that while he failed to obtain dollar funding from abroad, he was able to obtain local financing from FNCB after having revised the loan application and after having made further studies to make the defendant's business more bankable, which revisions were accepted and approved by FNCB.

The testimony of the plaintiff that he contact (sic) FNCB and DBP and conferred with certain officials thereof is uncorroborated despite the fact that he had all the opportunities to do so. The record is bereft of any showing that the officials of said banks were not available. Neither was there any proof of the so-called revised loan application, nor of any participation of the plaintiff in the said revision. Exhibit "L", the project study (carbon copy) of the "Aguirre Steel Drum Manufacturing" which the plaintiff claims to have prepared, the original of which he also claims to have submitted to FNCB to support the loan application of the defendant (See Exhibit "H"), does not contain any marking or indication that it was prepared by the plaintiff, or that the original thereof was in fact submitted by him to FNCB, or that it was the real basis or reason for the grant of defendant's loan. It is worthy to note that the plaintiff has been duly authorized by a written special power of attorney, dated May 3, 1971 (Exhibit "21"), to act for and in behalf of the defendant. As a matter of fact, he admitted that he signed the name of the defendant in a letter, dated April 12, 1972, which he claims to have prepared and sent to the FNCB (Exhibit "I"). Upon the other hand, the letter of FNCB (Exhibit "H") giving the information that the loan has been approved mentions the name "Mr. J. Aguirre", and at the bottom thereof is a phrase which reads, "As verbally advised you x x x thus clearly giving the impression that it was the defendant himself who personally conducted the negotiations with FNCB. The market study (Exhibit "F-1") which the plaintiff claims to have submitted to DBP has been denied by the defendant, and there is no proof that a copy of the same has been received by the DBP. Much less is there any proof that the same was the very reason for the restructuring of defendant's loan. The plaintiff, while on the witness stand, admitted that after his return from abroad, the defendant has not seen him so much so that he does not know the result of defendant's business operations from 1972 to 1976. The foregoing circumstances, in effect, confirm the defendant's testimony that he personally prepared and submitted to FNCB and DBP his financial studies, project study, projected cash-flow (see Exhibits "24", "24-A", "24-E", "24-F", "24-G", "25", "25-A", "26", "26-A", and "26-B"), and that he alone without any help from the plaintiff, conferred with officials of the DBP and PCB and submitted to them the requirements until he succeeded in obtaining the loan and in the restructuring of his loan accounts (See Exhibits "I", "I-A", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17" and "17-A"). Defendant's contention does not appear to be far-fetched because he is a Commerce Graduate, Major in Accounting, at Jose Rizal College in 1942, and a former employee of FNCB for 20 years, in various capacities as messenger, teller, senior clerk, purchasing officer and senior officer in the Foreign Department during the last 10 years of his employment thereat.

The impression in favor of plaintiff's theory initially generated by his possession of initialed duplicate or carbon copies of letters addressed to the defendant by the DBP (Exhibits "E", "G" and "K") or photo copy of DBP's letter to the defendant (Exhibit "H"), has been dissipated by the fact that the defendant also has (i) a photo copy of Exhibit "H", which has been marked as Exhibit "4"; (ii) an initialed copy of Exhibit "E", which has been marked as Exhibit "8"; and (iii) a photo copy of Exhibit "G", which has been marked as Exhibit "13". Thus, the Court is of the belief that initialed or photo copies of communication could have been easily secured from said banks by the interested parties, or by the plaintiff in whose favor the defendant has executed a special power of attorney since May 3, 1971. Moreover, the defendant has presented other initialed copies of letters by DBP to FNCB (Exhibit "9"), by DBP to the defendant, instead of the originals thereof (Exhibits "10", "15", "16", and "17"), and by the defendant to the DBP (Exhibits "6", "7", "12" and "14") and to PCB (Exhibit "11"), which the plaintiff does not possess. Neither does the plaintiff possess copies of the project study,

financial studies and projected cash-flow (Exhibits "23", "23-A", "23-B", "26", "26-A" and "26-B") which, according to the defendant, definitely convinced the bank officials in the restructuring of his loan accounts.' "[9]

We disagree.

There is no question that on May 3, 1971, petitioner and private respondent entered into a Management and Service Agreement so petitioner can assist respondent in stopping the foreclosure of his assets by the DBP and PCB for overdue loan accounts of about P180,000.00 and to look for funds with which to settle said overdue account, to buy equipment and raw materials and to serve as working capital for the latter's steel drum manufacturing business. Petitioner is a management and financial consultant of several domestic and foreign companies. Private respondent admits that petitioner worked for his dollar funding abroad which proved futile.

The issue is whether or not petitioner rendered the contracted services to private respondent, i.e., the negotiation of the loan with the FNCB and the restructuring of private respondent's outstanding loans with the DBP and the PCB.

In ruling in favor of private respondent, the trial court observed that the testimony of the petitioner to the effect that he contacted certain officials from the FNCB and DBP is uncorroborated by any of said officers who could have been presented by him. On the contrary, the testimony of petitioner is corroborated by the documentary evidence he presented regarding his work, as well as matters relating to the preparation and follow-up of the loan application and restructuring of the existing ones.

The trial court also noted that the project study[10] of the "Aguirre Steel Drum Manufacturing" which petitioner claims to have prepared and the original of which was submitted to the FNCB to obtain the loan application of private respondent[11] does not contain any marking or indication that it was prepared by petitioner or that the original was in fact submitted to the FNCB or that it was the real basis or reason for the grant of private respondent's loan. Suffice it to state that in the preparation of such project study it was unnecessary for petitioner to reflect thereon that it was prepared by him. Petitioner asserted that he submitted the original thereof to the FNCB.

Indeed, a similar exhibit of the private respondent, that is the project study,[12] was found by the trial court to have been submitted to the FNCB which became the basis for the approval of the loan. The trial court assumed the same was prepared by the private respondent although there are no markings or indications thereon to this effect.

By the same token, a copy of the market study presented by petitioner,[13] the original of which he claims to have submitted to the DBP, was allegedly denied by private respondent, according to the trial court. However, on the witness stand, the private respondent categorically admitted that the said market study was in fact submitted to the DBP.[14]

The private respondent's contention that he alone prepared and submitted to the FNCB and the DBP his financial studies, project study, projected cash flow,[15] and that he alone conferred with the DBP and PCB officials until he obtained the loan and the restructuring of his accounts[16] which the trial court found to be credible is not supported by the records. What is clear and credible is the statement of petitioner that in many instances he was accompanied to the bank by private respondent.

Petitioner produced the initialed duplicate or carbon copies of the letter addressed to the private respondent by the DBP[17] and a photo copy of the letter of the DBP to private respondent.[18] Private respondent admitted that petitioner wrote to FNCB on April 12, 1972 signing in behalf of the private respondent reporting on the status of

the business.[19] This was done by petitioner by virtue of the special power of attorney executed in his favor by private respondent on May 3, 1971.[20]

The trial court considered the theory of the private respondent incredible when he asserted that he gave a loan of P5,000.00 to petitioner on August 21, 1973 instead. The court a quo found that the amount was voluntarily given by private respondent to petitioner for services rendered.[21]

The Court finds and so holds that petitioner rendered services in good faith to private respondent in accordance with their Management and Service Agreement and thus, he should be entitled to remuneration as agreed upon by them.[22] Because of the unreasonable refusal of the private respondent to pay for the lawful and legitimate claim of the petitioner, petitioner was compelled to prosecute this case in court. Accordingly, petitioner is entitled to damages by way of attorney's fees in the amount of P10,000.00.

WHEREFORE, the decision of the Court of Appeals dated February 26, 1988 and its resolution dated May 4, 1988 are hereby REVERSED AND SET ASIDE and another judgment is hereby rendered requiring private respondent to pay petitioner the amount of P55,000.00 with legal interest from the date of promulgation of this judgment, plus attorney's fees in the amount of P10,000.00, as well as to pay the costs of the suit.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Justice Lorna Lombos-de la Fuente, ponente, concurred in by Justices Antonio M. Martinez and Cecilio L. Pe.

[2] Page 48, Rollo.

[3] Page 12, Rollo.

[4] Pages 38 to 40, Rollo.

[5] Pages 52 to 53, Rollo.

[6] 88 Phil. 527 (1951).

[7] 93 Phil. 807 (1953).

[8] Pages 48 to 51, Rollo.

[9] Pages 34 to 36, Rollo.

[10] Exhibit "H".

[11] Exhibit "L".

[12] Exhibits "23" and "26".

[13] Exhibit "F-1".

[14] Page 174, TSN, July 6, 1978.

[15] Exhibits "24", "24-G". "25". "25-A". "26" and "26-B".

[16] Exhibits "I", "I-1", "I-2" to "17-A".

[17] Exhibits "E", "G", "K", and foto copy of the letter of DBP.

[18] Exhibit "H".

[19] Exhibit "I".

[20] Exhibit "21".

[21] Page 26, Rollo.

[22] Article. 1234, Civil Code.

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