

**FRUCTUOSO R. CAPCO, PETITIONER, VS. MANUEL R. MACASAET,
JACOBO FELICIANO AND HONORABLE COURT OF APPEALS,
RESPONDENTS.**

G.R. No. 90888. September 13, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner submits to us for review the propriety of the Court of Appeals' disregarding the findings of fact and the award of damages made by the trial court.

This petition is an offshoot of an action for damages filed by the petitioner against the private respondents docketed as Civil Case No. 24105 and decided by the Regional Trial Court, National Capital Judicial Region, Branch 151 of Pasig, Metro Manila which ruled as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant Manuel Macasaet, sentencing the latter to pay the former, the following sums:

- a) Three Hundred Two Thousand Six Hundred Fifty-Eight Pesos and Twenty Centavos (P302,658.20) for and as actual damages;
- b) One Hundred Thousand Pesos (P100,000.00) for and as moral damages;
- c) Fifty Thousand Pesos (P50,000.00) for and as exemplary damages; and
- d) Fifty Thousand Pesos (P50,000.00) for and as attorney's fees and litigation expenses.

The complaint and defendant Macasaet's cross claim against defendant Jacobo Feliciano are dismissed.

Defendants Manuel Macasaet's and Jacobo Feliciano's counterclaims are likewise dismissed.

Costs against defendant Manuel Macasaet." (Rollo, pp. 55-56)

The petitioner was a stockholder of record, director and executive vice-president of Monte Oro Mineral Resources, Inc. (Monte Oro for brevity's sake), a local mining company whose shares were traded in the stock market. He owned 56,588,358 shares of the capital stock of Monte Oro with par value of P0.01 per share or a total par value of P565,883.58 as evidenced by Stock Certificate No. 002 (Exhibit "A") for 14,159,583 share and Stock Certificate No. 026 (Exhibit "B") for 42,428,775 shares.

On February 18, 1976, the petitioner indorsed and delivered Stock Certificate Nos. 002 and 026 to private respondent Manuel Macasaet, board chairman and President of Monte Oro, who personally received the said certificate in the following tenor:

"ACKNOWLEDGMENT RECEIPT"

I hereby certify that I have personally received from Mr. Fructuoso R. Capco the following Monte Oro

Certificates in trust and for safe keeping only to be delivered and/or surrendered to him and/or his heirs or duly authorized representative on demand. (Exhibit "C")

Cert. No. Amount Date Remarks

002 14,159,583 12/04/74 'Already Indorsed'

026 42,428,775 04/16/75 'Already Indorsed'

Total 56,588,358

Received as stated:

(Sgd) MANUEL R. MACASAET"

(Exhibit "C")

On April 26, 1976, the petitioner demanded the return of his stock certificates from respondent Macasaet who failed to produce them because he had given them to the other private respondent Jacobo Feliciano, another officer of Monte Oro, allegedly in connection with a contemplated joint venture with the group of one Leonilo Esguerra.

On April 28, 1976, respondent Macasaet replaced the petitioner's Stock Certificate No. 026 with his own Stock Certificate No. 025 covering 42,578,700 shares. The petitioner duly acknowledged the receipt of the said replacement (Exhibit "3").

On May 4, 1976, Stock Certificate No. 002 was returned by respondent Macasaet to the petitioner as evidenced by the handwritten receipt signed by the latter (Exhibit "2") who likewise made a handwritten notation stating "all cleared" at the left hand margin thereof.

On August 12, 1976, the petitioner filed a complaint for damages against the private respondents alleging, among others, that at the time he demanded his Stock Certificate Nos. 002 and 026 totalling 56,588,358 shares from respondent Macasaet the petitioner had a ready buyer for P0.014 per share for all shares; that due to the private respondents' failure to return the said stock certificates upon demand, the petitioner lost P306,115.25 representing the difference between the amount of P792,237.01 which he would have realized had his stock certificates been promptly given back and the sum of P486,121.76, the actual net proceeds from the subsequent sale of 42,550,000 shares at various prices after respondent Macasaet delivered his own Stock Certificate No. 025 in exchange for the petitioner's Stock Certificate No. 026; that the aforesaid amount of P306,115.25 had long been overdue and unpaid and despite repeated demands from the private respondents for the payment thereof, the latter had failed and refused to pay the same to the petitioner's damage and prejudice; and that due to the private respondents' intentional, deliberate and malicious acts, moral and exemplary damages could be awarded to the petitioner.

Respondent Macasaet counter-alleged, among others, that he had in turn entrusted Stock Certificate Nos. 002 and 026 of the petitioner to his co-defendant, respondent Feliciano to be shown to a certain group for the purpose of a joint venture; that respondent Macasaet had actually made several demands for the return of the said stock certificates from respondent Feliciano who refused and failed to do so; that two days after the petitioner made the demand, respondent Macasaet replaced the petitioner's Stock Certificate No. 026 with his own Stock Certificate No. 025 which covered 149, 925 shares more than those of the petitioner's Stock Certificate No. 026; that the respondent Macasaet returned the petitioner's Stock Certificate No. 002 on May 4, 1976 after he recovered the same from respondent Feliciano; and that the words "ALL CLEARED" written by the petitioner himself on his acknowledgment receipt as he received Stock Certificate No. 002 from respondent Macasaet undoubtedly meant to discharge private respondent Macasaet from any responsibility or liability regarding the petitioner's stock

certificates.

On August 8, 1983, the lower court rendered a judgment favorable to the petitioner. It also dismissed the complaint and respondent Macasaet's cross-claim against respondent Feliciano and likewise dismissed private respondents' counter-claims against the petitioner.

On appeal by respondent Macasaet, the Court of Appeals on June 19, 1989, reversed and set aside the trial court's judgment for lack of merit and supporting proof. The petitioner's complaint as well as the cross-claims and counter-claims of private respondents were all dismissed.

After the petitioner's subsequent motion for reconsideration was denied on October 23, 1989, the present petition was filed assigning as errors, to wit:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED BLINDLY SUPPORTING THE FIRST AND SECOND THEORY OF PRIVATE RESPONDENT THAT THE WRITTEN ANNOTATION OF 'ALL CLEARED' IN STOCK CERTIFICATE NO. 002 NECESSARILY INCLUDED ANOTHER SEPARATE AND DIFFERENT STOCK CERTIFICATE NO. 026 AND ASSUMING THERETO 'PAYMENT' OF LIABILITY OF PRIVATE RESPONDENT TO PETITIONER.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CLEARING PRIVATE RESPONDENT OF RESPONSIBILITIES BY DISREGARDING OR ABROGATING A VOLUNTARY CONTRACT OF TRUST, (ACKNOWLEDGMENT RECEIPT, DATED FEBRUARY 18, 1976, ANNEX "C" PLAINTIFF'S COMPLAINT; EXH. "C" - PLAINTIFF) ALSO ON MERE ASSUMPTION THAT THE ENDORSEMENT ON THE SUBJECT STOCK CERTIFICATES CONSTITUTE FULL AUTHORITY TO PRIVATE RESPONDENT TO DELIVER, CONVEY AND SELL THE SAME.

III

THE HONORABLE COURT OF APPEALS LIKewise COMMITTED GROSS ERROR IN CLEARING THE PRIVATE RESPONDENTS OF LIABILITY FOR ALL DAMAGES ALREADY SUFFERED AND INCURRED BY PETITIONER.

IV

THE HONORABLE COURT OF APPEALS ALSO COMMITTED GRAVE ERROR BY CONCLUDING LACK OF EVIDENCE TO SUPPORT CLAIM OF DAMAGES AND DISREGARDING THE FACTS AND EVIDENCE DULY ADMITTED AND PROVEN AT A FORMAL TRIAL IN THE LOWER COURT." (Petition, pp. 5-6, Rollo, pp. 16-17)

The petitioner's main argument rests on the oft-repeated pronouncement that the conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as observe the demeanor of the witnesses while testifying citing the case of *Chase v. Buencamino* (136 SCRA 605 [1985]). The petitioner faults the respondent court for side-stepping the literal interpretation of the Acknowledgment Receipt dated February 18, 1972 signed by the respondent Macasaet which allegedly serves as a clear proof that Stock Certificate Nos. 002 and 026 were held by the latter in trust and for safekeeping only. The petitioner further labels as capricious the respondent court's act of completely ignoring all the established evidence, both documentary and

testimonial, duly admitted and considered by the trial court.

The rule that the trial court's findings of fact are accorded due respect on appeal is not without exceptions. It is not applicable where there are strong and cogent reasons as when the trial court's findings are not supported by the evidence or when the trial court failed to consider material facts which would have led to a conclusion different from what was stated in its judgment or when the trial court's decision was attended by grave abuse of discretion amounting to lack of jurisdiction. A review of the bases for the trial court's decision shows that the appellate court was justified in being skeptical as it went over both the facts and the law.

The instant case was given due course to enable a more thorough presentation by the parties and review of the records considering the petitioner's stress on the disparity between the factual findings of the trial court which found respondent Macasaet liable for actual, moral and exemplary damages and the respondent appellate court which discharged the said respondent from any liability regarding the petitioner's Stock Certificate Nos. 002 and 026.

It is true that when the petitioner delivered Stock Certificate Nos. 002 and 026 to respondent Macasaet the latter acknowledged receiving them "in trust and for safekeeping only." This acknowledgment, however, cannot outweigh the legal effects of the stock certificates having been "already indorsed". There is no dispute that respondent Macasaet received the petitioner's certificates in that condition as evidenced by the same Acknowledgment Receipt dated February 18, 1976.

Certificates of stocks are considered as "quasi-negotiable" instruments. When the owner or shareholder of these certificates signs the printed form of sale or assignment at the back of every stock certificate without filling in the blanks provided for the name of the transferee as well as for the name of the attorney-in-fact, the said owner or shareholder, in effect, confers on another all the indicia of ownership of the said stock certificates. (Campos and Lopez-Campos, Notes and Selected Cases on Negotiable Instruments Law, 1971 ed., p. 605). In the case at bar, the petitioner signed the printed form at the back of both Stock Certificate Nos. 002 and 026 without filling in the blanks at the time the said stock certificates were delivered to respondent Macasaet. Hence, the petitioner's acts of indorsement and delivery conferred on respondent Macasaet the right to hold them as though they were his own. On account of this apparent transfer of ownership, it was not irregular on the part of respondent Macasaet to deliver the stock certificates in question to respondent Feliciano for consideration in connection with a contemplated tie-up between two business groups.

At this juncture, it is worth noting that in view of the petitioner's concurrent positions as director, Executive Vice-President and General Manager of Monte Oro at the time of the incident under consideration, he could not have been unaware of the consequences of the delivery coupled with the indorsement of his two stock certificates to respondent Macasaet, notwithstanding the tenor of the Acknowledgment Receipt. Moreover, it is hard to believe that the petitioner's delivery of the subject stock certificates to respondent Macasaet was strictly for safe-keeping purposes only because if that were his real and only intention, there is neither logic nor reason for the indorsement of the said certificates.

After a careful perusal and examination of the records of this case, we find no legal ground that will constrain us to depart from the rule that the Court of Appeals' findings of fact are deemed final, conclusive and binding on us if supported by substantial evidence. We reiterate our ruling in the case of *Hermo v. Court of Appeals*, (155 SCRA 24 [1987]) that:

"At once apparent is that the factual findings of the Court of Appeals are diametrically at odds with those of the Trial Court, x x x. And basic is the rule that the conclusions of fact of a trial court are entitled to great weight, and should not generally be disturbed on appeal, because it is in a better position than the appellate

tribunal to examine the evidence directly, and to observe the demeanor of the witnesses while testifying. Withal, its findings of fact, though entitled to great respect, are not conclusive on the Court of Appeals. In the exercise of its appellate jurisdiction, the Court of Appeals may affirm, reverse, or modify the judgment or order appealed from, and may direct a new trial or further proceeding to be had. It is indeed the duty of that Court chiefly though not exclusively to review a Trial Court's findings of fact and correct such serious errors affecting them as may have been properly assigned and as may be established by a re-examination of the recorded evidence. And it is the findings of fact of the Court of Appeals, not those of the trial court, that are as a rule deemed final, and conclusive even on this Court." (Underscoring Supplied) (At p. 27)

We find no reversible error in the respondent Court's holding that the petitioner failed to support his claim that he suffered the claimed damages as a result of respondent Macasaet's failure to return Stock Certificate Nos. 002 and 026 upon demand. The alleged "unrealized profits" representing actual and compensatory damages must be supported by substantial and convincing proof. The records are bereft of such kind of proof. Mere allegation that there was a "ready and willing buyer" of all the petitioner's shares covered by Stock Certificate Nos. 002 and 026 for P0.014 per share at the time the demand for the return of the said certificates was made cannot suffice to allow the petitioner's claim for unrealized profits to prosper. Such claim is clearly speculative in nature.

Actual or compensatory damages are those recoverable because of pecuniary loss in business, trade, property, profession, job or occupation, and the same must be proved; otherwise, if the proof is flimsy and non-substantial, no damages will be given (*Danao v. Court of Appeals*, 154 SCRA 447 [1987]; *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]; *Perfecto v. Gonzales*, 128 SCRA 635 [1984]). Actual and compensatory damages require evidentiary proof. They cannot be presumed. (*Dee Hua Liong Electrical Equipment Corporation v. Reyes*, 145 SCRA 713 [1986])

The good faith of respondent Macasaet is shown by the fact that after trying to recover the missing certificates, he immediately substituted Stock Certificate No. 026 with his own Stock Certificate No. 025 which covered more shares than the petitioner's replaced certificate. The petitioner's other Stock Certificate No. 002 was subsequently returned and received by the petitioner with the notation "All Cleared" on the acknowledgment receipt duly signed and personally written by him. We agree with the respondent court's ruling that the said notation meant to discharge respondent Macasaet (together with his co-respondent Feliciano) from any liability with respect to the stock certificates in question as there can be no other plausible interpretation therefor. He would not have written "all cleared" if he was unhappy at that time about the substitution of the higher value certificate for his other certificate.

In fine, considering that in the absence of malice and bad faith, moral damages cannot be awarded (*Philippine National Bank v. Court of Appeals*, 159 SCRA 433 [1988]) and that the grant of moral and exemplary damages has no basis if not predicated upon any of the cases enumerated in the Civil Code (*Bagumbayan Corporation v. Intermediate Appellate Court*, 132 SCRA 441 [1984]), we hold that the respondent court properly set aside the award of actual, moral and exemplary damages given by the trial court in favor of the petitioner.

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED. The assailed decision dated June 19, 1989 and the resolution dated October 23, 1989 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Bidin and Cortes, JJ., concur.

Fernan, C.J., (Chairman), on official leave.

Feliciano, J., see concurring statement.

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CONCURRING OPINION

FELICIANO, J.:

I concur in the result reached by Mr. Justice Hugo E. Gutierrez, Jr. I should merely like to render a brief note in respect of his statement that: "it is hard to believe that petitioners' delivery of the subject stock certificates to respondent Macasaet was strictly for safekeeping purposes only because if that were his real and only intention, there is neither logic nor reason for the indorsement of the said certificates".

Petitioner was very probably not unaware of the consequences of delivering stock certificates which had been indorsed in blank. However, awareness of such consequences may precisely explain why the Acknowledgment Receipt executed by private respondent Macasaet specifically stated that he had received the stock certificates in question "for safekeeping only to be delivered and/or surrendered to him x x x on demand". In other words, there was here no unrestricted delivery of the stock certificates. On the contrary, the delivery of the stock certificates to private respondent Macasaet was clearly a limited or qualified delivery, for a specified purpose only. If the Acknowledgment Receipt had not been a restricted receipt, full authority or absolute ownership over the stock certificates would have been transferred to private respondent Macasaet. The restricted Acknowledgment Receipt thus had a qualifying and countervailing effect upon the indorsement in blank of the stock certificates involved. Although indorsed in blank, the stock certificates are not then intended to be transferred to and cannot be disposed of by petitioner-holder.

There are a number of possible reasons why petitioner should have wanted to indorse the stock certificates in blank while delivering them to private respondent under a restricted receipt: for one thing, the petitioner could go out of town or out of the country on business or otherwise; during his trip, he would be in a position to instruct private respondent to sell the shares already indorsed in blank when it might be profitable or convenient to do so without need of executing and sending back a special power of attorney, by the simple expedient of lifting the restriction found in the Acknowledgment Receipt. Indorsement in blank of stock certificates facilitates the ready transferability of the stock certificates; at the same time, the restricted Acknowledgment Receipt effectively constituted private respondent a bailee or trustee vis-a-vis petitioner. The arrangement may be seen to have both a fiduciary quality and a certain flexibility, a combination of substantial utility in the trading of corporate securities.

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