

SPECIAL TWELFTH DIVISION

[CA-G.R. CV. No. 99157, February 14, 2014]

SPOUSES FEDERICO DEL ROSARIO AND PRESENTACION DEL ROSARIO, REPRESENTED BY THEIR ATTORNEY-IN-FACT ARVIN DEL ROSARIO, PLAINTIFFS-APPELLEES, V. SPOUSES MICHAEL FLORES AND AVA SHEILA FLORES, DEFENDANTS-APPELLANTS.

D E C I S I O N

ELBINIAS, J.:

Subject here is an Appeal^[1] filed under Rule 41 of the Rules of Court. The Appeal assails the Decision^[2] dated May 31, 2012 of the Regional Trial Court ("lower court" for brevity) of Lucena City, Branch 55 in Civil Case No. 2009-85 for "Specific Performance with Damages"^[3].

The pertinent facts are as follows:

On October 23, 2009, plaintiffs-appellees Spouses Federico Del Rosario and Presentacion Del Rosario, who were represented by their Attorney-in-Fact Arvin Del Rosario, ("plaintiffs-appellees" for brevity) filed before the lower court, a Complaint^[4] for "Specific Performance with Damages"^[5] against defendants-appellants Spouses Michael Flores and Ava Sheila Flores ("defendants-appellants" for brevity).

The rest of the facts are those as stated in the lower court's Decision^[6] dated May 31, 2012, as follows:

"xxx defendant (*defendant-appellant here*) Ava Sheila Flores is the niece of plaintiff (*plaintiff-appellee here*) Presentacion del Rosario, the latter being the sister of Ava Sheila's (*defendant-appellant's*) mother. It being so, earnest efforts were exerted by the plaintiffs (*plaintiffs-appellees here*) to reach possible settlement before filing the case in court but failed. **In the year 2004 while the plaintiffs (*plaintiffs-appellees*) were in Italy, defendant Michael Flores (*defendant-appellant*) tried to convince the plaintiffs (*plaintiffs-appellees*) through the phone to invest in the business dealing on computer services or something about Easybytes. Persuaded by Michael (*defendant-appellant*) that the business was good[,], the plaintiffs (*plaintiffs-appellees*) acceded to it. As agreed upon by them, Michael (*defendant-appellant*) sent to them in Italy [a] prepared Partnership contract xxx for their signature. Federico (*plaintiff-appellee*) signed it and sent it back to Michael (*defendant-appellant*) in the Philippines to have it notarized. And, as part of the agreement, plaintiffs (*plaintiffs-appellees*) sent to the defendants (*defendants-appellants here*) the total amount of P750,000.00 as their contribution to the**

business endeavor which, as pictured by Michael (defendant-appellant), was profitable. In the year 2006[,] plaintiffs (plaintiffs-appellees) came home but to their dismay, they found out that there was no partnership business to speak of, the partnership documents were not processed and registered and the investment money they sent to the defendants (defendants-appellants) were unaccounted for. Eventually, defendants (defendants-appellants) promised to pay back the same, reached an agreement and they executed a document, known as Kasunduan ng Bayaran xxx which was notarized by lawyer Calixto Daus III. In the mentioned document[,] defendants (defendants-appellants) undertook to pay their obligation within 3 years from 2007 up to 2009 but despite demands after the lapse of the period as promised, defendants (defendants-appellants) failed to pay it. Thinking that the defendants (defendants-appellants) would not be able to pay their obligation to them plaintiffs (plaintiffs-appellees) brought the matter to the Barangay Angeles Zone II in Tayabas, Quezon for possible settlement. Nothing happened however[,] so plaintiffs (plaintiffs-appellees) are seeking for the payment of P750,000.00 plus interest from October, 2004 until it is fully paid. They (plaintiffs-appellees) also pray for moral damages and payment for attorney's fees and appearance fees of their lawyer in the amount mentioned in the complaint."^[7] *(Emphasis Supplied)*

On December 15, 2009, defendants-appellants filed their Answer with Counterclaim^[8]. The rest of the facts are continued in the lower court's Decision^[9] dated May 31, 2012, to wit:

"xxx defendants (defendants-appellants) xxx did not deny that Michael Flores (defendant-appellant) called by phone the plaintiffs (plaintiffs-appellees) inviting the latter (plaintiffs-appellees) to engage in business which at that time was profitable. Michael (defendant-appellant) admitted that he (defendant-appellant) sent to the plaintiffs (plaintiffs-appellees) the Article of Partnership but with the instruction to have it authenticated before the Consul where the plaintiffs (plaintiffs-appellees) are residing. He (defendant-appellant) was informed by the plaintiffs (plaintiffs-appellees) that the authentication abroad was expensive. Hence, the signed but un-notarized document was returned to him (defendant-appellant). And this is the reason why the document was not and could not be notarized here in the Philippines. In their defense, defendants (defendant-appellant) claim that the business venture entered into by the parties is a valid partnership and being so the amount of P750,000.00 contributed by the plaintiffs (plaintiffs-appellees) are to be considered partnership fund and when it incurred losses plaintiffs (plaintiffs-appellees) cannot personally recover the investment from the defendants. The business suffered losses, for which reason, defendant (defendant-appellant) cannot be compelled to return the amount contemplated in the complaint. Defendants (defendants-appellants) pray for the dismissal of the complaint, with cost, and for the payment of all sorts of damages and lawyer's fees."^[10] *(Emphasis Supplied)*

On May 31, 2012, the lower court rendered its assailed Decision^[11] in favor of plaintiffs-appellees. The dispositive portion of the lower court's Decision read:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the defendants to pay plaintiffs jointly and severally the following:

1. P750,000.00 for the actual loss incurred by plaintiffs, plus legal interest from the filing of the complaint on October 23, 2009 until they are fully paid;
2. P100,000.00 for and as attorney's fees;
3. P6,010.00 expenses for court filing fee, another P8,890.00 representing filing fee and P1,000.00, for trust fund and other expenses with the total of P16,754.00 as reflected in the first page of the records.

Defendants counterclaim is dismissed.

SO ORDERED."^[12]

Defendants-appellants then filed the Appeal^[13] at bench, praying that:

"**WHEREFORE**, premises considered, it is respectfully prayed that the appealed decision be REVERSED and SET ASIDE and the complaint for specific performance with damages be dismissed.

Other reliefs, just and equitable under the premises, are likewise prayed for."^[14] (*Emphasis and Italics were made in the original*)

Defendants-appellants raised the following assignment of errors:

"[I.]

THE LOWER COURT ERRED IN DECLARING THAT THE DEFENDANTS-APPELLANTS DEEMED TO HAVE WAIVED THEIR RIGHT TO PRESENT THEIR EVIDENCE.

II.

THE LOWER COURT ERRED IN RULING THAT THERE IS NO PARTNERSHIP CREATED BETWEEN THE PARTIES.

III.

THE LOWER COURT ERRED IN RULING THAT THE DEFENDANTS-APPELLANTS ARE INDEBTED TO THE PLAINTIFFS-APPELLEES IN THE AMOUNT OF SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000.00)."^[15] (*Emphasis was made in the original*)

To begin with, contrary to defendants-appellants' *assigned error I*, the lower court properly submitted the case for decision.

Defendants-appellants had argued as follows:

"It must be recalled that the defendants-appellants' counsel has withdrawn his representation during the trial. Since then, defendant-appellant Michael has attended every scheduled hearing without counsel's representation. They had difficulty in securing the services of a new counsel because of their financial condition. Unfortunately, the trial court, without taking into account the foregoing circumstances, considered the defendants-appellants to have waived their right to present evidence. Considering the magnanimity of the amount involved, the trial court should have made them aware of the consequences [of] such waiver. If only measures were taken to allow them to present their pieces of evidence, it could have been established that there was indeed a joint business venture agreement of partnership between the parties.

In fact, the ten (10) Banco de Oro Checks for the account of Easybytes Computer Ventures shows that Managing Partner Michael Flores has been remitting shares of profits to plaintiffs-appellees. These pieces of evidence, contrary to the plaintiffs-appellees' assertion, would prove that the parties have agreed to put up a partnership venture and it was realized until it suffered losses. The original BDO checks are hereto attached and marked as Appendix 'B'. Besides, there are also Equitable PCI Bank deposit slips and check vouchers which the defendants-appellants deposited as remittances to the plaintiffs-appellees. The original owner's Equitable PCI bank deposit receipt and the original copy of the check vouchers are hereto attached and marked as Appendix 'C' and 'D', respectively. Moreover, the joint business venture between the defendants-appellants and the plaintiffs-appellees was materialized with a registered name business name EASYBYTES COMPUTER VENTURE-LUCENA BRANCH.

Although, these pieces of evidences were not formally offered in evidence during the trial, the same may be considered on appeal in the exercise of the Honorable Court's sound discretion disregarding sheer technicality that may overcome its sense of justice in considering the merits of the case where there exists no doubt as to its veracity. xxx"^[16]

Defeating defendants-appellants' arguments however, is that defendants-appellants were deemed to have waived their right to present their evidence. As the records revealed, defendants-appellants were given by the lower court several opportunities^[17] to present their evidence. However, defendants-appellants chose not to submit any.

Moreover, as is the settled rule, a party's failure to make a formal offer of evidence within a considerable period of time shall be deemed a waiver by such party to submit it.^[18] This rule was declared by the Supreme Court in *Heirs of Pedro Pasag, et al. vs. Sps. Lorenzo and Florentina Parocha, et al.*,^[19] as follows:

"The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, as in this case, any evidence that has not been offered shall be excluded and rejected.