

SECOND DIVISION

[G.R. NOS. 138701-02, October 17, 2006]

SPOUSES ROQUE YU, SR. AND ASUNCION YU AND LEYTE LUMBER YARD & HARDWARE CO., INC., PETITIONERS, VS. BASILIO G. MAGNO CONSTRUCTION AND DEVELOPMENT ENTERPRISES, INC. AND THE ESTATE OF BASILIO G. MAGNO, RESPONDENTS.

DECISION

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, the spouses Roque Yu, Sr. and Asuncion Yu, with co-petitioner Leyte Lumber Yard & Hardware, Co., Inc., (Leyte Lumber) assail and seek to set aside the consolidated Decision^[1] dated October 20, 1998 of the Court of Appeals (CA) in *CA-G.R. CV Nos. 43714 and 43715*, as reiterated in its Resolution^[2] of May 11, 1999, denying the petitioners' motion for reconsideration. *CA-G.R. CV No. 43714* is an appeal by the spouses Roque Yu, Sr. and Asuncion Yu from the decision of the Regional Trial Court (RTC) of Tacloban City in its Civil Case No. 5823, while *CA-G.R. CV No. 43715* is an appeal taken by Leyte Lumber Yard from the decision of the same RTC in its Civil Case No. 5822.

The assailed CA decision holds petitioner Leyte Lumber liable to the herein respondents in Civil Case No. 5822 for the amount of P631,235.61 with interest, and, on the same breath, holds the respondents liable to petitioner spouses Roque Yu, Sr. and Asuncion Yu in Civil Case No. 5823 in the amount of P625,000.00 with interest, and P50,000.00 as and by way of attorney's fees.

The facts:

The spouses Roque Yu, Sr. and Asuncion Yu are the controlling stockholders of Leyte Lumber, a business enterprise engaged in the sale of lumber, building and electrical supplies and other construction materials. During his lifetime, Engr. Basilio G. Magno (Magno) entered into a verbal agreement with Leyte Lumber through Roque Yu, Sr., whereby the latter agreed to supply Magno with building materials he may need in his construction business. The success of Magno's business gave birth to the Basilio G. Magno Construction and Development Enterprises, Inc. (BG Magno).

Owing to this fruitful relationship, the two (Roque Yu, Sr. and Magno) entered into a joint venture, the Great Pacific Construction Company (GREPAC), with Yu as President and Magno as Vice President.^[3]

Magno, for what he obtained from Leyte Lumber, paid either in cash or by check. The relationship between Yu and Magno began in 1975 and continued until Magno's death on August 21, 1978.^[4]

By the time the business relationship between Yu and Magno was coming to an end, the respondents allege that the parties have dealt with each other to the amount of at least P7,068,000.00.^[5]

On January 30, 1979, in the RTC of Tacloban City, the petitioners instituted two (2) separate complaints for sums of money with damages and preliminary attachment against the respondents. One was *Civil Case No. 5822*,^[6] raffled to Branch 8 of the court, instituted by Leyte Lumber against BG Magno and the Estate of Basilio Magno, to collect on the principal amount of P1,270,134.87 for construction materials claimed to have been obtained on credit by BG Magno, and the other was *Civil Case No. 5823*,^[7] raffled to Branch 6, filed by the Yu spouses against BG Magno and the Estate of Basilio Magno, to collect upon loans and advances (P3,575,000.00) allegedly made by the spouses to BG Magno.

As defendants in *Civil Case No. 5823*, the respondents moved to dismiss the case on the ground that the claims must be pursued against the estate of the deceased Magno. The motion was denied, and eventually the estate of Magno was dropped as party-defendant.

On the other hand, in *Civil Case No. 5822*, during the pretrial conference, the petitioners, as plaintiffs in that case, proposed that a commissioner be appointed. The respondents as defendants in the case interposed no objections, and so Atty. Romulo Tiu was appointed and tasked with the duty to examine and make a detailed report on the documents and books of account of the parties to determine the nature and extent of their respective claims and liabilities.^[8] Atty. Tiu was later replaced by Mr. Uldarico Quintana, and finally by Mr. Ernesto C. Silvano, who is a lawyer and an accountant^[9] by profession.

The commissioner prepared a summary of account receivables^[10] and submitted three reports: the first, dated November 1, 1980; the second, dated February 19, 1981; and the third, dated March 29, 1982.^[11] To these reports the parties submitted their respective comments and objections.

During trial, the petitioners presented in *Civil Case No. 5822* before Branch 8 three witnesses, namely: petitioner Roque Yu, Sr., himself, Atty. Ernesto C. Silvano (the commissioner) and Yao Ping Chan, cashier of Consolidated Bank and Trust Co., who testified merely on the circumstances surrounding specific checks that were issued during the course of the transactions between the parties. For their part, the respondents offered two witnesses: the widow Perpetua Magno and commissioner Silvano.

As regards *Civil Case No. 5823* before Branch 6, the petitioners presented three witnesses: Roque Yu, Sr., Roque Yu, Jr., and senior bookkeeper Eduardo de Veyra of the Tacloban Branch of the United Coconut Planters Bank. For their part, the respondents did not present a single witness, but adopted their evidence presented in *Civil Case No. 5822*. They did not, however, make a formal offer of their evidence in both cases.

On June 17, 1993, Branch 8 of the court rendered its decision^[12] in *Civil Case No. 5822*, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiff:

1. Dismissing the complaint;
2. Declaring that defendant had made overpayment to the plaintiff in the sum of P620,239.61;
3. Ordering the plaintiff to return to the defendant the amount of P620,239.61 with interest of 12% per annum from the date hereof until fully paid;
4. Ordering the plaintiff to pay defendant the sum of P200,000.00 for exemplary damages;
5. Ordering the plaintiff to pay defendant the sum of P50,000.00 for attorney's fees and litigation expenses; and
6. Ordering plaintiff to pay the costs of this suit.

SO ORDERED.

Also, on the same date - June 17, 1993 - Branch 6 rendered its decision^[13] in *Civil Case No. 5823*, the *fallo* of which reads:

WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiffs:

1. Dismissing the plaintiffs' complaint;
2. Declaring that defendant had made overpayments to the plaintiffs in the sum of P1,602,625.52;
3. Ordering plaintiffs to return to defendant the sum of P1,602,625.52 with 12% interest per annum from the date hereof until fully paid;
4. The Writ of Attachment is hereby ordered immediately dissolved;
5. Ordering the plaintiffs to pay defendant the sum of P200,000.00 moral and exemplary damages;
6. Ordering the plaintiffs to pay defendant P100,000.00 attorney's fees and litigation expenses;
7. Ordering plaintiffs to pay the costs of this suit.

SO ORDERED.

The two separate decisions of even date were penned by Judge Getulio M. Francisco, the presiding judge of Branch 6 to which only Civil Case No. 5823 was raffled. In other words, Judge Francisco of Branch 6 rendered the decision in Civil Case No. 5822 earlier raffled to and heard by Branch 8 of which he was not the presiding judge. The parties did not move for a reconsideration of the two decisions nor did they call the attention of Judge Francisco on the absence of an order for

consolidation of the two cases. Instead, they directly interposed their respective appeals to the CA.

In the CA, the two cases on appeal, docketed as *CA-G.R. CV Nos. 43714* (for Civil Case No. 5823) and *43715*^[14] (for Civil Case No. 5822), were consolidated.

On October 20, 1998, the CA rendered its questioned consolidated decision^[15] dispositively reading, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Civil Case No. 5822, the appealed decision is **MODIFIED** by declaring that defendant B.G. Magno Construction and Development Enterprises, Inc., made an overpayment in the amount of P631,235.61, instead of P620,239.61 as found by the court *a quo*, and ordering plaintiff to return said amount to defendant, with interest of 12% *per annum* from promulgation hereof until fully paid, and by **DELETING** the award of exemplary damages in the sum of P200,000.00 in favor of defendant. Thus modified, the judgment below is AFFIRMED in all other respects.

In Civil Case No. 5823, the appealed decision is **REVERSED** and **SET ASIDE**. Accordingly, defendant B.G. Magno Construction and Development Enterprises, Inc. is ordered to pay plaintiffs the sum of P625,000.00, with 12% interest per annum from promulgation hereof until fully paid, and the further sum of P50,000.00 by way of attorney's fees, plus costs of suit.

SO ORDERED.

With their motion for reconsideration having been denied by the CA through its Resolution of May 11, 1999, the petitioners are now with this Court via the present recourse, submitting the following arguments for our consideration:

A. Re: C.A.-G.R. CV No. 43714: (Civil Case No. 5823).

1. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN REFUSING TO EXCLUDE EVIDENCE OFFERED TO RTC BRANCH 8, BUT NOT TO BRANCH 6, OF WHICH EVIDENCE RTC BRANCH 6 IMPROPERLY TOOK JUDICIAL NOTICE.
2. ASSUMING FOR THE SAKE OF ARGUMENT THAT RTC BRANCH 6 COULD TAKE JUDICIAL NOTICE OF EVIDENCE NOT OFFERED TO IT, NONETHELESS, SUCH EVIDENCE SHOW THAT RESPONDENT B.G. MAGNO IS LIABLE TO PETITIONERS FOR P3,675,000.00.

B. Re: C.A.-G.R. CV No. 43715: (Civil Case No. 5822).

1. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN AFFIRMING THE DECISION OF RTC BRANCH 6 BECAUSE THE LATTER HAD NO JURISDICTION OVER CIVIL CASE NO. 5822 WHICH WAS TRIED IN ITS ENTIRETY BY RTC BRANCH 8.

2. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN AFFIRMING THE DECISION OF RTC BRANCH 6 BECAUSE BASED ON EVIDENCE PRESENTED TO RTC BRANCH 8, NO COURT COULD HAVE DECIDED IN FAVOR OF RESPONDENTS.

In sum, the petitioners question, *first*, the propriety of the presiding judge of Branch 6 rendering a decision in a case filed and heard in Branch 8. They claim that Branch 6 had no jurisdiction to decide Civil Case No. 5822 pending in Branch 8 in the absence of a motion or order of consolidation of the two cases; *second*, Branch 6 erred in considering the evidence presented in Branch 8; and *third*, the preponderance of evidence in both cases warrants a resolution of the cases in their favor.

The respondents, on the other hand, hold steadfast to the CA's finding of overpayment on their part, and that Branch 6 had jurisdiction to render a decision in Civil Case No. 5822 of Branch 8 since the circumstance that the judge who penned the decision in both cases did not hear the other case in its entirety is not a compelling reason to jettison his findings and conclusions.^[16]

On the issue of Branch 6 taking judicial notice of the evidence presented in Branch 8, the respondents argue that there was a previous agreement of the parties with respect to the same.

On the question of the propriety of Judge Francisco of Branch 6 formulating the decision in Civil Case No. 5822 which was pending and tried in Branch 8, we declare that there was nothing irregular in the procedure taken. The records show that there appears to have been a previous agreement to either transfer or consolidate the two cases for decision by the presiding judge of Branch 6. As found by the CA:

...although Civil Case No. 5822 was raffled to and tried in Branch 8..., the court a quo issued joint orders dated February 16, 1993 and September 10, 1993 in Civil Case Nos. 5822 and 5823...Recognizing the apparent transfer of Civil Case No. 5822 to the court a quo, appellants' [petitioners'] counsel filed his formal appearance dated October 20, 1993 with Branch 6...There is therefore no basis to appellants' contention that the court a quo is devoid of authority to decide Civil Case No. 5822.^[17]

Indeed, when the respondents filed a *Motion to Lift, Dissolve and Quash the Writs of Attachment* with Branch 6 on January 20, 1993, the caption thereof indicated the docket numbers of *both* cases.^[18] Likewise, on October 29, 1993, when the petitioners' new counsel entered his Formal Appearance, in the caption thereof was also written the docket numbers of *both* cases.^[19] Petitioners' previous counsel of longstanding (whose representation dates back to the filing of the two complaints in 1979) filed his Motion to Withdraw as Counsel on October 30, 1993, and the caption thereof similarly indicated the docket numbers of *both* cases.^[20] Subsequent orders of the court which emanated from Branch 6 also bear, in the caption thereof, the titles and docket numbers of *both* cases.^[21] In other words, as early as six months prior to the promulgation of Judge Francisco's decisions in the two (2) cases, there appears to have been a transfer or consolidation of said cases in Branch 6 and the parties knew of it, albeit the actual date when the two cases were consolidated or transferred does not appear on record. Nonetheless, the fact remains that no