

SECOND DIVISION

[G.R. NO. 161379, August 11, 2005]

**MA. TERESA BELONIO, PETITIONER, VS. RICHARD RODRIGUEZ
AND AND THERESA C. REYES, DOING BUSINESS UNDER THE
NAME AND STYLE "T.C. REYES CONSTRUCTION & SUPPLY,""
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76433 affirming the Order^[2] dated December 3, 2001 and subsequent Order^[3] dated October 21, 2002 denying the motion for reconsideration thereof of the Regional Trial Court (RTC) of General Santos City, Branch 36, in Civil Case No. 6092 which dismissed the complaint for collection of sum of money and damages on the ground of failure to prosecute under Section 3, Rule 17 of the Rules of Court.

On July 14, 1997, petitioner Ma. Teresa Belonio filed a complaint for sum of money and damages with prayer for the issuance of a writ of attachment against Richard Rodriguez and his mother, Theresa C. Reyes, licensed government contractors doing business under the name and style "

T.C. Reyes Construction & Supply."^[4]

The petitioner made the following allegations in her complaint:

2.2. Defendant Theresa C. Reyes ("T.C. Reyes") is a licensed government contractor, operating under the name and style "T.C. Reyes Construction & Supply."

2.3. Defendant Richard Rodriguez ("Rodriguez") is the son of T.C. Reyes and has been authorized by her mother to represent her and manage and represent T.C. Reyes Construction & Supply ("T.C. Reyes Construction") in all dealings with third parties.

2.4. On or about November of 1996, defendant T.C. Reyes, represented by her son, defendant Rodriguez, entered into a special arrangement with plaintiff Belonio and Engr. Norman Llido.

2.5. The special arrangement was established to assist defendants T.C. Reyes and Rodriguez comply with their contractual commitments to the government on the contracts awarded to them. The internal understanding of the parties regarding the special arrangement was as follows:

- (a) Defendant T.C. Reyes, through defendant Rodriguez, would handle actual bidding and solicitation of contracts, official representation and liaison with the government, actual construction operation, including sourcing of materials and labor, and collection.
- (b) Engr. Llido was to assist defendants T.C. Reyes and Rodriguez in project implementation and supervision.
- (c) Plaintiff's role was to handle general administration and accounting for defendants T.C. Reyes and Rodriguez.

2.6. Initially, defendant T.C. Reyes and defendant Rodriguez were able to bag some juicy contracts for several government infrastructure projects, and implementation of the said projects commenced.

2.7. In the course thereof, defendant Rodriguez found it difficult to source the necessary capital to sustain continued supply of materials and labor.

2.8. Thus, defendant Rodriguez approached and, eventually, was able to convince Engr. Llido to lend his name and credit and guarantee the account of T.C. Reyes Construction with several hardware stores so as to ensure continuous flow of materials for the ongoing government projects.

2.9. Subsequently, defendant Rodriguez was able to convince Engr. Llido to advance various amounts of money to T.C. Reyes Construction to meet the obligations to hardware stores and labor cost requirements. It was specifically agreed between Engr. Llido and defendant Rodriguez that the amounts advanced by the former will earn add-on interest fixed at 3% a month compounded.

2.10. All told, Engr. Llido advanced to defendant Rodriguez a sizable amount of money in excess of 2 million pesos. These advances were evidenced by several postdated checks issued by defendant Rodriguez either payable to Engr. Llido or to hardware stores but discounted and paid by Engr. Llido; which checks were issued to facilitate payment.

2.11. As the implementation of the projects progressed, defendants T.C. Reyes and Rodriguez encountered difficulty in their collections with the government. Consequently, defendant Rodriguez found it quite difficult to sustain payments to Engr. Llido on the amounts that the latter advanced and the 3% add-on interest.

2.12. To prevent their share in the joint venture from being consumed by the 3% add-on interest being paid to Engr. Llido, defendant Rodriguez approached plaintiff Belonio and proposed a scheme which he called "double exposure."

2.13. Under the aforesaid scheme, defendant Rodriguez would get a sizable amount of money from plaintiff and use the money to pay a portion of the advances of Engr. Llido and the 3% add-on interest.

2.14. According to defendant Rodriguez, if the said "double exposure" scheme will materialize, they could buy time and prevent the 3% add-on interest from eating into and consuming their collections from the government. He assured plaintiff that he could easily return the money as collections from the government are up and coming and will soon be released.

2.15. Thus, plaintiff borrowed money from a local financier at 6% interest per month and delivered a total amount of One Million Five Hundred Thousand Pesos (P1,500,000.00) to defendant Rodriguez sometime during the period from April to May of 1997 for the sole purpose of allowing defendant Rodriguez to pay-off a portion of the advances of Engr. Llido and the 3% add-on interest under the so-called "double exposure" scheme of defendant Rodriguez.

2.16. Defendant Rodriguez acknowledged receipt of the One Million Five Hundred Thousand Pesos (P1,500,000.00) by issuing several postdated checks, to wit:

Check No./Bank	Amount	Date
04348/Inter'l Exch. Bank	P500,000.00	May 2, 1997
06773/Inter'l Exch. Bank	300,000.00	June 21, 1997
06772/Inter'l Exch. Bank	400,000.00	June 21, 1997
06778/Inter'l Exch. Bank	<u>300,000.00</u>	July 7, 1997
Total	P1,500,000.00	July 7, 1997

Copies of the said postdated checks are attached hereto as Annexes "A" to "D" for easy reference.

2.17. However, after receiving the One Million Five Hundred Thousand Pesos (P1,500,000.00) from plaintiff, defendant Rodriguez misappropriated the same and instead of paying Engr. Llido as he had committed, defendant Rodriguez diverted it to his personal use and could no longer account for the same. Worse, defendant T.C. Reyes disavowed any knowledge or participation in the transactions and dealings of her son, defendant Rodriguez with plaintiff.

2.18. Worse, the postdated checks issued by defendant Rodriguez were all dishonored as his account with the drawee bank is already closed. (c.f. Annexes "A" to "D" hereof).

2.19. Last Saturday, 5 July 1997, defendant Rodriguez left General Santos City for Davao City allegedly for psychiatric rehabilitation.

2.20. Recently, defendant T.C. Reyes received several checks from the government, and contrary to a standing agreement with plaintiff and Engr. Llido, she encashed the said checks and withheld a substantial portion of the proceeds thereof from them.

...

3.2. Defendant Rodriguez, despite repeated demands, have failed to

account for the One Million Five Hundred Thousand Pesos (P1,500,000.00) that he has received from plaintiff.

3.3. He has not paid Engr. Llido from the amount that he has received from plaintiff contrary to the purpose for which the amount was released by plaintiff. Worse, defendant T.C. Reyes has denied participation or involvement in the transactions and business relationship of plaintiff and her son, defendant Rodriguez, with plaintiff.

3.4. However, it is very clear from the start that defendant Rodriguez was only acting for and in behalf of defendant T.C. Reyes and T.C. Reyes Construction in all his dealings with Engr. Llido and plaintiff, as well as third parties.

3.5. Thus, both defendants should be made to pay, jointly and severally, the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), including legal interest thereon.

3.6. In addition, defendant should be made to pay the amount of at least Ninety Thousand Pesos (P90,000.00) a month as actual damages corresponding to the interest that plaintiff is paying to the financier who provided the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), until the latter amount is fully paid.

...

4.2. In view of the misappropriation and conversion of the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), and the failure of defendants to account for the same, plaintiff suffered moral damages in the form of sleepless nights, serious mental anguish and anxiety, wounded feelings and similar injury in the aggregate amount of One Hundred Fifty Thousand Pesos (P150,000.00).^[5]

The petitioner made the following prayer:

WHEREFORE, it is respectfully prayed that this Honorable Court:

- 1) Upon the filing by plaintiff of a bond in an amount to be fixed by the Honorable Court, order the issuance of a writ of attachment directing the attachment of all properties of defendants sufficient to satisfy plaintiff's claim, and after trial on the merits.
- 2) Order defendants, jointly and severally, to pay the principal amount of One Million Five Hundred Thousand Pesos (P1,500,000.00), Philippine currency, including legal interest thereon until fully paid.
- 3) Order defendants to pay, jointly and severally, actual damages in the amount of at least Ninety Thousand (P90,000.00), Philippine currency, a month corresponding to interest paid to a local financier who is the source of the

amount delivered and misappropriated by defendants, until the principal amount is fully paid.

- 4) Order defendants, jointly and severally, to pay Fifty Thousand Pesos (P50,000.00) as exemplary damages, and One Hundred Fifty Thousand Pesos (P150,000.00) as moral damages and 25% of the total amount due as Attorney's Fees and expenses of litigation.

Other reliefs just and equitable under the premises are, likewise, prayed for.^[6]

Respondent Reyes made the following special/affirmative defenses in her answer to the complaint:

10.- The complaint states no cause of action as against the defendant Teresa C. Reyes;

11.- The defendant Teresa C. Reyes had no transaction with either the plaintiff or Engr. Norman Llido for the period covering November 1996 or at the time that her son, allegedly obtained the sum of P1,500,000.00 from the plaintiff, which she knew nothing of, much less consented or authorized;

12.- In the same manner, she never received a centavo from the said amount or availed of any fraction thereof for her own construction projects, a fact all the while known to the plaintiff whose transactions with Richard Rodriguez was completely unknown to the herein defendant and independent of that of her mother, hence, the lack of privity or contractual relations between herein defendant and the plaintiff;

13.- It was only on 31 May 1997 that upon earnest representations of the plaintiff, Engr. Llido, and her son, Richard Rodriguez that the herein defendant agreed to assign some of the projects to the threesome which projects are still an on-going concern as of the filing of this answer;

14.- Regrettably, prior to the commencement of the assigned projects hereto adverted, the triumvirate encountered internal problems allegedly relative to the P1,500,000.00 priorly obtained by Richard Rodriguez for their own business adventures/partnership totally foreign to the projects then undertaken by the herein defendant;

15.- The inability of the threesome, to resolved (sic) their differences, propelled the plaintiff to drag the herein defendant into their internal problem, obviously speculating that the herein defendant might be coerced into giving succor to her son whom the plaintiff, likewise, harassed with a criminal case, allegedly for *estafa*;

16.- Clearly, the institution of the instant complaint against the herein defendant was attended with gross and evident bad faith, with no honest intent of prevailing but merely to subject the mother to hardship,