

THIRD DIVISION

[G.R. No. 47013, February 17, 2000]

**ANDRES LAO, PETITIONER, VS. COURT OF APPEALS, THE
ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION AND
ESTEBAN CO, RESPONDENTS.**

[G.R. No. 60647]

**ESTEBAN CO, PETITIONER, VS. COURT OF APPEALS AND ANDRES
LAO, RESPONDENTS.**

[G.R. No. 60958-59]

**THE ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION,
PETITIONER, VS. COURT OF APPEALS, ANDRES LAO, JOSE LAO,
AND TOMAS LAO, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

These consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court revolve around discrepant statements of accountability between a principal and its agent in the sale of cigarettes.

The common factual background at bar follows:

On April 6, 1965, The Associated Anglo-American Tobacco Corporation (Corporation for brevity) entered into a "Contract of Sales Agent" with Andres Lao. Under the contract, Lao agreed to sell cigarettes manufactured and shipped by the Corporation to his business address in Tacloban City. Lao would in turn remit the sales proceeds to the Corporation. For his services, Lao would receive commission depending on the kind of cigarettes sold, fixed monthly salary, and operational allowance. As a guarantee to Lao's compliance with his contractual obligations, his brother Jose and his father Tomas executed a deed of mortgage^[1] in favor of the Corporation in the amount of P200,000.00

In compliance with the contract, Lao regularly remitted the proceeds of his sales to the Corporation, generating, in the process, a great deal of business. Thus, the Corporation awarded him trophies and plaques in recognition of his outstanding performance from 1966 to 1968. However, in February 1968 and until about seven (7) months later, Lao failed to accomplish his monthly sales report. In a conference in Cebu, Ching Kiat Kam, the President of the Corporation, reminded Lao of his enormous accounts and the difficulty of obtaining a tally thereon despite Lao's avowal of regular remittances of his collections.

Sometime in August and September 1969, Esteban Co, the vice-president and general manager of the Corporation, summoned Lao to Pasay City for an accounting. It was then and there established that Lao's liability amounted to P525,053.47. And so, Lao and his brother Lao Y Ka, enlisted the services of the Sycip Gorres and Velayo Accounting Firm (SGV) to check and reconcile the accounts.

Ching Kiat Kam allowed Lao to continue with the sales agency provided Lao would reduce his accountability to P200,000.00, the amount secured by the mortgage. The Corporation thereafter credited in favor of Lao the amount of P325,053.47 representing partial payments he had made but without prejudice to the result of the audit of accounts. However, the SGV personnel Lao had employed failed to conclude their services because the Corporation did not honor its commitment to assign two of its accountants to assist them. Neither did the Corporation allow the SGV men access to its records.

Subsequently, the Corporation discovered that Lao was engaging in the construction business so much so that it suspected that Lao was diverting the proceeds of his sales to finance his business. In the demand letter of April 15, 1979,^[2] counsel for the Corporation sought payment of the obligations of Lao, warning him of the intention of the Corporation to foreclose the mortgage. Attached to said letter was a statement of account indicating that Lao's total obligations duly supported by receipts amounted to P248,990.82.

Since Lao appeared to encounter difficulties in complying with his obligations under the contract of agency, the Corporation sent Ngo Kheng to supervise Lao's sales operations in Leyte and Samar. Ngo Kheng discovered that, contrary to Lao's allegation that he still had huge collectibles from his customers, nothing was due the Corporation from Lao's clients. From then on, Lao no longer received shipments from the Corporation which transferred its vehicles to another compound controlled by Ngo Kheng. Shipments of cigarettes and the corresponding invoices were also placed in the name of Ngo Kheng.

On May 21, 1970, Andres, Jose and Tomas Lao brought a complaint for accounting and damages with writ of preliminary injunction^[3] against the Corporation, docketed as Civil Case No. 4452 before the then Court of First Instance of Leyte, Branch I in Tacloban City, which court^[4] came out with its decision^[5] on March 26, 1975, disposing as follows:

"IN VIEW OF ALL THE FOREGOING PREMISES, and upon a clear preponderance of evidence in favor of the plaintiffs, the court hereby renders judgment as follows:

1. Ordering both the plaintiffs and defendant corporation to undergo a Court supervised accounting of their respective account with the view of establishing once and for all, by a reconciliation of their respective books of accounts, the true and correct accountability of Andres Lao to the defendant corporation. Pursuant thereto, both plaintiff Andres Lao and the defendant The Associated Anglo-American Tobacco Corporation are directed to make available all their records pertaining [sic] to their business transactions with each other under the contract of sales agent, from 1965 up to the time Andres Lao ceased being the agent of the defendant. A

Committee on Audit is hereby formed to be composed of three (3) members, one member to be nominated by the plaintiffs, another to be nominated by the defendant corporation and the third member who shall act as the Committee Chairman to be appointed by this Court. As Committee Chairman, the Court hereby appoints the Branch Clerk of Court of this Court, Atty. Victorio Galapon, who shall immediately convene the Committee upon appointment of the other two members, and undertake to finish their assigned task under his decision within two (2) months.

2. Ordering the defendant corporation to pay Plaintiffs the amount of P180,000 representing actual loss of earnings.
3. Ordering the defendant to pay plaintiffs moral damages in the amount of P130,000.00.
4. Ordering the defendant to pay to the plaintiffs, exemplary damages in the amount of P50,000.00.
5. Ordering the defendant to pay to the plaintiffs, attorney's fees in the amount of P40,000.00.
6. Ordering the plaintiffs and the defendant to pay the compensation of the commissioners pro-rata.
7. Finally ordering the defendant to pay the cost of this suit.

SO ORDERED."

The Committee of Audit that was eventually constituted was composed of Atty. Victorio L. Galapon, Jr., as chairman, Wilfredo Madarang, Jr. and Cesar F.P. Corcuera, as representatives of the Corporation, and Lao himself. On September 16, 1976, said committee submitted a report^[6] with the following findings:

"Total remittances made by Mr. Andres Lao in favor of Associated from April 10, 1965 to November 1969 which are substantially supported by official receipt	P13,686,148.80
Shipments by Associated to Mr. Andres Lao duly supported by bills of lading, factory consignment invoices and delivery receipts.....	9,110,777.00
Shipments by Associated to Mr. Andres Lao, covered by bills of lading and factory consignment invoices but with no supporting delivery receipts purported to have been delivered to Mr. Lao on the basis of sales made by him as reported in his monthly sales reports (except for sales in December, 1968 and November and December 1968 where the sales reports were not available to the Audit Committee).....	4,018,927.60

Shipments covered by bills of lading and factory consignment invoices but with no supporting delivery receipts	597,239.40
Shipments with covering factory consignment invoices but not covered by bills of lading and delivery receipts	126,950.00"

On February 28, 1977, the trial court^[7] promulgated a supplemental decision wherein it dismissed Lao's claim that he had made an overpayment of P556,444.20. The alleged overpayment was arrived at after deducting the total payment made by Lao in the amount of P13,686,148.80 from the total volume of shipments made by the Corporation in the amount of P13,129,704.60, without including the amount of P597,239.40, representing alleged shipments covered by bills of lading and factory consignment invoices but with no supporting delivery receipts, and the amount of P126,950.00, representing shipments with factory consignment invoices but not covered by bills of lading and delivery receipts. The trial court, in rejecting the claim of overpayment, held that "when he (referring to Lao) made partial payments amounting to P325,053.47 subsequent to the demand in September, 1969, he is deemed to have admitted his liability and his claim of overpayment is not only preposterous but devoid of logic." Therefore, with the sums of P597,239.40 and P126,950.00 included in the total volume of shipments made by the Corporation in the amount of P13,129,704.60, Lao's total remittances of P13,686,248.80 were short of P167,745.20. Thus, the trial court held:

"WHEREFORE, judgment is hereby rendered declaring plaintiff Andres Lao's accountability to defendant Corporation in the amount of P167,745.20 and ordering him to pay said amount of P167,745.20 to defendant The Associated Anglo-American Tobacco Corporation."

The Corporation appealed the decision, dated March 26, 1975, just as Lao appealed the supplemental decision, dated February 28, 1977, to the Court of Appeals. Docketed as CA-G.R. No. 62532-R, the appeal was resolved in the Decision of the Court of Appeals dated October 26, 1981,^[8] disposing thus:

"WHEREFORE, in connection with the decision of March 26, 1975, defendant corporation is hereby ordered to pay plaintiffs P150,000.00 actual damages for loss of earnings, P30,000.00 by way of moral damages and P10,000.00 for exemplary damages. As modified, the decision is AFFIRMED in all other respects.

As for the supplemental decision of February 28, 1977, the same is hereby reversed and set aside, and defendant-appellant corporation sentenced to reimburse Andres Lao's overpayment in the amount of P556,444.20. Costs against defendant-appellant corporation."

The Corporation presented a motion for reconsideration^[9] of the said Decision but the same was denied in a Resolution dated May 18, 1982.^[10] A motion for leave to file a second motion for reconsideration was likewise denied.^[11]

Meanwhile, on June 24, 1974 and during the pendency of Civil Case No. 4452, Esteban Co, representing the Corporation as its new vice-president, filed an affidavit of complaint^[12] with the Pasay City Fiscal's Office under I.S. No. 90994; alleging

that Lao failed to remit the amount of P224,585.82 which he allegedly misappropriated and converted to his personal use. Although the amount supposedly defalcated was put up as a counterclaim in Civil Case No. 4452 for accounting, the Corporation averred that it reserved the right to institute a criminal case against Lao.

On July 31, 1974, after finding a *prima facie* case against Lao, the Pasay City Fiscal filed an information^[13] for estafa against Lao, docketed as Criminal Case No. 2650-P before the then Court of First Instance of Rizal, Branch XXVII. Lao sought a reinvestigation^[14] of the case, contending that he was never served a subpoena or notice of preliminary investigation that was considered mandatory in cases cognizable by Court of First Instance, now Regional Trial Court. Apparently, the preliminary investigation proceeded *ex-parte* because Esteban Co made it appear that Lao could not be located.

On December 17, 1974, without awaiting the termination of the criminal case, Lao lodged a complaint^[15] for malicious prosecution against the Corporation and Esteban Co, praying for an award of damages for violation of Articles 20 and 21 of the Civil Code. The case was docketed as Civil Case No. 5528 before Branch I of the then Court of First Instance in Cotabato City.

In his resolution dated January 3, 1975,^[16] then Pasay City Fiscal Jose Flaminiano found merit in the petition for reinvestigation of the estafa case. He opined that Lao had not committed estafa as his liability was essentially civil in nature. The Fiscal entertained doubts about the motive of the Corporation in instituting the criminal case against Lao because of the undue delay in its filing, aside from the fact that the estafa case involved the same subject matter the Corporation sued upon by way of counterclaim in Civil Case No. 4452. Eventually, on May 13, 1976, the Court of First Instance of Rizal, Branch XXVII, in Pasay City, promulgated a decision^[17] acquitting Lao of the crime charged and adopting *in toto* the said Resolution of Fiscal Flaminiano.

On March 18, 1977, the Court of First Instance of Samar^[18] handed down a decision in Civil Case No. 5528, the action for damages arising from malicious prosecution, disposing thus:

"WHEREFORE, the Court declares that the defendants filed Criminal Case No. 2650-P against the plaintiff for estafa before the Court of First Instance of Rizal, Branch XXVII, Pasay City, without probable cause and with malice and therefore orders the defendants Associated Anglo-American Tobacco Corporation and Esteban Co to jointly and severally pay the plaintiff:

- a. P30,000 as actual damages;
- b. P150,000.00 as moral damages;
- c. P100,000.00 as exemplary damages;
- d. P50,000.00 as attorney's fees and costs.