

## THIRD DIVISION

[ G.R. No. 122857, March 27, 1998 ]

**ROY NICOLAS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SIXTH DIVISION) AND BLESILO F.B. BUAN, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

The issue in this petition is whether the Court of Appeals committed reversible error in its decision<sup>[1]</sup> dated August 16, 1995 overturning the decision<sup>[2]</sup> dated May 31, 1993 of the Regional Trial Court of Pasig, Branch 165, by ordering the dismissal of petitioner's complaint against private respondent for lack of merit.

On February 19, 1987, petitioner Roy Nicolas and private respondent Blesito Buan entered into a Portfolio Management Agreement,<sup>[3]</sup> wherein the former was to manage the stock transactions of the latter for a period of three months with an automatic renewal clause. However, upon the initiative of the private respondent the agreement was terminated on August 19, 1987, and thereafter he requested for an accounting of all transactions made by the petitioner.

Three weeks after the termination of the agreement, petitioner demanded from the private respondent the amount of P68,263.67 representing his alleged management fees covering the periods of June 30, July 31 and August 19, 1987 as provided for in the Portfolio Management Agreement. But the demands went unheeded, much to the chagrin of the petitioner.

Rebuffed, petitioner filed a complaint<sup>[4]</sup> for collection of sum of money against the private respondent before the trial court. In his answer,<sup>[5]</sup> private respondent contended that petitioner mismanaged his transactions resulting in losses, thus, he was not entitled to any management fees.

After hearing, the trial court rendered its decision in favor of plaintiff, herein petitioner, thus:

"In View Of All The Foregoing, judgment is hereby rendered ordering the defendant to pay plaintiff as follows:

1. The amount of P68,263.67 for the management fees of plaintiff.
2. The amount of P8,000.00 as and for attorney's fees and expenses of litigation.
3. Costs of suit.

SO ORDERED."

Dismayed, private respondent appealed the decision to the Court of Appeals. Finding merit in his case, the appellate court reversed the trial court's finding and ruled against the petitioner, to wit:

“WHEREFORE, the appealed decision should be, as it is hereby REVERSED and SET ASIDE, and as a consequence thereof, appellee's complaint is hereby DISMISSED. No costs.

SO ORDERED.”

Petitioner's motion for reconsideration was denied by the Court of Appeals on November 29, 1995.<sup>[6]</sup>

Due to the sudden reversal of events, petitioner is now before us assailing the Court of Appeals' ruling alleging that it misappreciated the evidence he presented before the trial court.

In reversing the trial court's decision, the Court of Appeals opined that:

“The lower court simply made a sweeping statement that the profits were generated by appellee's (Petitioner herein) transactions, making appellant (Private respondent herein) liable for the payment of the money demanded by appellee on the basis of self-serving profit and loss statements submitted as evidence by appellee. Other than these pieces of evidence, the trial court offered no satisfactory reason why the sum demanded by appellee be paid.”

We affirm the ruling of the Court of Appeals.

Under the Portfolio Management Agreement, it was agreed that private respondent would pay the petitioner 20% of all realized profits every end of the month as his management fees. The exact wording of the provision reads:

“X X X

X X X

X X X

3. For his services, the INVESTOR agrees to pay the PORTFOLIO MANAGER 20% of all realized profits every end of the month.”

Evidently, the key word in the provision is “profits.” Simply put, profit has been defined as “the excess of return over expenditure in a transaction or series of transactions”<sup>[7]</sup> or the “series of an amount received over the amount paid for goods and services.”<sup>[8]</sup>

To begin with, petitioner has the burden to prove that the transaction realized gains or profits to entitle him to said management fees, as provided in the Agreement. Accordingly, petitioner submitted the profit and loss statements<sup>[9]</sup> for the period of June 30, July 31 and August 19, 1987, showing a total profit of P341,318.34, of which 20% would represent his management fees amounting to P68,263.70.

For clarity these documents are reproduced hereunder:

“Profit & Loss Statement

of

Atty. Blesilo Buan

for the Period Ended June 30, 1987

Shares	Issue	Profit	Loss
1,500	PLDT	₱ 7,265.62	
5,000	ATLAS		4,609.38
2,000	SMC		11,477.50
5,000	ATLAS	1,450.00	
5,000	ATLAS	3,906.25	
5,000,000	SEAFRONT	11,487.50	
1,000	SMC		5,247.50
2,000	SMC		5,895.00
1,000	SMC	12,242.50	
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		₱ 36,351.87	₱ 27,229.38
Trading Profit		₱ 9,122.49	
		x .2	
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		₱ 1,824.50 <sup>[10]</sup>	

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### Profit & Loss Statement

of

Atty. Blesilo Buan

for the Period Ended July 31, 1987

Shares	Issue	Profit	Loss
22,300,000	BASIC	₱ 222,963.75	
400	PLDT	35,372.50	
5,700	GLO	32,347.50	
1,700	SMC		9,350.00
27,000	AC	16,216.87	
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		₱ 306,900.62	₱ 9,350.00
Net Trading Profit		₱ 297,550.62	