PEOPLE’S TRANS-EAST ASIA INSURANCE CORP. AND SPS. ANTONIO YNOC & GLORIA YNOC, PLAINTIFFS-APPELLEES, vs. WILLIAM TIU AND RANDY L. DIMAPE, DEFENDANTS-APPELLANTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is an appeal from the August 31, 2011 Decision[3] rendered by Branch 20 of the Regional Trial Court in Cebu City in Civil Case No. CEB-20610 (Damages and Attorney's Fees) the fallo of which reads:

> "WHEREFORE, upon the foregoing considerations, Judgment is hereby rendered –
>
> Sentencing the defendants solidarily to pay plaintiff People's Trans-East Asia Insurance Corporation the sum of Php153,335.59 as reimbursement for the insurance indemnity paid by the latter for the repair of Inoc's Mitsubishi car; and
>
> Sentencing the defendants solidarily to pay the sum of Php46,000.00, which is the amount equivalent to 30% of Php153,335.59, as attorney's fees, and the costs in this litigation.
>
> The counterclaim is hereby dismissed.
>
> SO ORDERED."

The Antecedent Facts

In a Complaint[4] for damages and attorney's fees filed before the Regional Trial Court of Cebu City, Branch 20 on July 24, 1997, the plaintiffs-appellees alleged, inter alia, that:

- The Spouses Ynoc owned a brand new Mitsubishi Pajero Turbo Wagon with Plate No. GNN-747, with Certificate of Registration No. 36511631 and covered with an own damage insurance in the amount of Php1,000,000.00 issued by co-plaintiff People's Trans-East Asia Insurance Corp., Cebu Branch Office, for the period October 2, 1996 to October 2, 1997;

- The defendant William Tiu is a public utility bus operator under the name and style "D Rough Riders" plying the route from Cebu City to Bogo, Cebu and other northern towns, and vice versa, one of which is a truck bearing Plate No. GVB-205;

- On November 2, 1996, at about 9:00 a.m., plaintiff Antonio Ynoc was carefully driving his Mitsubishi Pajero Turbo Wagon from Cebu City going to Bogo Cebu. While he was negotiating the one lane uphill road to Sitio Base Brgy., Dumlog, Sogod, Cebu and was almost through, a D Rough Riders bus bearing Plate No. GVB-205 owned by defendant William Tiu and driven by Randy L. Dimape, authorized driver, running from opposite direction, bumped head on plaintiff's car;

- Immediately before the incident, plaintiff Ynoc noticed that the oncoming passenger bus of defendant was overloaded with passengers some of whom were on top. The bus insisted to run downhill forcing plaintiff Ynoc to

immediately step on the brakes for there was no other safe way – if he swerved to the left he will fall to the cliff/ ravine, and if he swerved to the right, he would slam on the mountainside;

- At the time of road accident, the registration certificate of passenger bus bearing Plate No. GVB-205 owned by defendant Tiu and driven by defendant Dimape had expired on May 4, 1996;

- The car of plaintiffs sustained damages as a result of the impact, the repair of which was estimated by Cebu Asian Motors Corp. to cost Php180,169.31;

- Oral and written demands were made upon defendants but they failed and refused to indemnify the plaintiffs-spouses Ynoc compelling the latter to claim indemnity from their own damage insurer, the co-plaintiff People's Trans-East Asia Insurance Corp. The latter paid the amount of Php 153,335.59 for the repair of the damaged Mitsubishi Pajero, while the Spouses Ynoc shared the amount of Php9,409.47. People's Trans-East Asia Insurance Corp. was partly subrogated to the rights of plaintiffs;

- The spouses Ynoc were deprived of the use of their vehicle for thirty (30) days and had to hire the services of taxicab at an average daily expense of Php500.00 in taking their children to and from their school and in going to their place of work;

- The spouses Ynoc prayed for moral damages in the amount of Php50,000.00; exemplary damages in the amount of Php50,000.00; contingent fee of thirty (30%) percent of whatever amount of damages that plaintiffs may be awarded; and litigation expenses in the amount of Php20,000.00. The plaintiffs-spouses Ynoc also prayed for actual damages in the amount of Php9,409.47 which was their share in the cost of repair, while the plaintiff People's Trans-East Asia Insurance Corp. also prayed for actual damages in the amount of Php153,335.47.

On September 15, 1997, the defendants-appellants filed their Answer[5] and denied the material allegations in the complaint, to wit:

- That it was not defendant Demape who was at fault and recklessly driving, but plaintiff Antonio Ynoc;

- That at the time of the incident, the bus driven by defendant Demape was not overloaded and had an updated registration;

- That defendant William Tiu had religiously and diligently exercised his responsibilities in the selection and supervision of his drivers including defendant Demape;

- That at the time of the incident, the single-lane road was at the right lane of the bus. When the bus entered the single-lane road, it was free from any oncoming vehicle. It was only when the bus was halfway through the single-lane road that the vehicle driven by the plaintiff Ynoc entered the other end of the single-lane road despite being fully aware of the oncoming bus;

- That as the defendant Demape repeatedly sounded the bus's horn and blinked its headlights to warn the plaintiff Ynoc's oncoming vehicle since the bus had the right of way at that point in time;

- That instead of giving way to the oncoming bus, the plaintiff Ynoc insisted on entering the single-lane road and continued to move forward even if the defendant's bus was already halfway through;

- That sensing a collision, defendant Demape fully applied the brake of the bus as there was no more space on the road to either turn left or right;

- That despite applying the bus's brake, the bus and the plaintiff Ynoc's vehicle still collided and that on account of the impact, the defendant's bus was badly damaged;

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- That whatever damages the plaintiffs suffered was due to the plaintiff Ynoc's recklessness;

- As counterclaim, the defendants prayed that the plaintiffs be made to jointly and severally pay Php72,000.00 as total actual and compensatory damages; Php50,000.00 as Attorney's fees; Php100,000.00 as Exemplary Damages and Php30,000.00 as litigation expenses.

The trial court conducted pre-trial and limited the issues[6] to the following:

- Whether or not plaintiffs are entitled to the damages prayed for in the complaint;

- Whether or not defendants are entitled to their counterclaims;

- Whether or not defendant driver was negligent in the operation of said passenger bus;

- Whether or not plaintiff's Mitsubishi Pajero motor vehicle was at stop position when it was hit and bumped by the passenger bus ozwned by defendant William Tiu;

Trial on the merits ensued.

The plaintiffs-appellees presented the testimonies of witnesses Antonio Ynoc, PO3 Crescente B. Armamento and Ramon E. Aguilar and offered the following documentary exhibits:

Exhibits:

“A”

- Policy No. PC-07024[7];

“B”

- Release of Claim;[8]

“C” “D” “E”

- pictures of plaintiff's damaged vehicle;[9]

“F” to “F-8”

- Sketch depicting the scene of the vehicular accident;[10]

“G”

- machine copy of police report;[11]

“H”

- Letter of Authority;[12]

“I”

- Demand Letter;[13]

“J” to “J-4”

- Official Receipts of filing fee[14].

On the other hand, defendants-appellants presented the testimonies of witnesses Nestor Erejer, Roberto Lipardo, and William Tiu and offered the following documentary exhibits:

Exhibits:

“2” - Release of Claim[15];

“3” - Sketch[16];

“4” - Official Receipt LTO;[17]

“5” - Certificate of Registration;[18]

“6” - Rough Riders rules and regulations;[19]

“7” - Voucher;[20]

“8” - SEC Certification[21].

Then on August 31, 2011, the trial court rendered its Decision and made the following findings in its ratio decidendi:

> “From the foregoing facts, it is clear and hardly disputable that Dimape was negligent in the way he drove the passenger bus and the serious damage caused to Inoc's car is attributable solely to his fault and reckles imprudence. Had he driven his car carefully and slowly, knowing as he did that he was negotiating a blind curve and mindful that another vehicle could be coming from the opposite side, as did happen, he could have timely applied his brakes upon seeing Inoc's car and avoided the accident. The court cannot give credence to the version of the defendants as it is not supported by the evidence. The sketch and the police report show that contrary to the claims of the defendants, the accident happened as Inoc was approaching the curve at the upper end of the road going to Bogo, Cebu and the truck had just entered it shortly after negotiating the curve. It was going downhill. The car was not traveling fast as it was traveling uphill. Besides, Inoc's family was with him, he had to drive carefully.
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> 'Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict x x x.' (Article 2176, New Civil Code) Such finding of negligence gives rise to the presumption of negligence on the part of his employer who has the burden of proving that it exercised due diligence in the selection and supervision of his employees (Pantranco North Express, Inc. vs. Baesa, G.R. No. 79050-51, November 14, 1989). Article 2180 of the New Civil Code. Provides that '(e)mployers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.'
>
> Admittedly, at the time of the accident, defendant Dimape was employed as driver of defendant William Tiu. William Tiu, therefore, as employer, is presumed to have been negligent in the selection and supervision of Dimape. It was his burden to overcome this presumption by competent proof of due diligence. According to his testimony, the usual routine he does when one applies as driver in his company is to conduct an interview on the applicant. Afterwards, the applicant is informed of the company rules and regulations and subjected to actual driving test and written examination. If he passes the tests, he undergoes training and then accepted for probationary employment for six (6) months before being admitted as regular driver. Tiu's testimony however was not corroborated or supported by other oral or documentary evidence. Obviously, such bare testimony is weak and insufficient to overcome the presumption of negligence on his part. As employer, Tiu's liability is direct and immediate; it is not conditioned upon prior recourse against the defendant employee (Dimape) and a prior showing of the insolvency of the latter (Kapalaran Bus Lines Coronado [sic], 176 SCRA 792). His liability is primary and solidary with that of his driver-employee Dimape (Rafael Reyes Trucking, Corp. vs.

People of the Philippines, G.R. No. 129029, 3 April 2000).

The evidence has likewise established that plaintiff People's Trans-East Asia Insurance has paid indemnity as insurer for the repair of Inoc's Mitsubishi car in the amount of Php153,335.59, as shown in the release of claim. By the principle of subrogation, provided for in Article 2207 of the New Civil Code, People's Trans-East Asia is entitled to collect the said amount from the defendants as part of the latter's liability or obligation to the plaintiff-Inoc Spouses for the wrongdoing and damages they have caused to the latter.

'ART. 2207. If the plaintiff's property has been insured and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.'

Article 2207 is a restatement of a settled principle of American jurisprudence. Subrogation has been referred to as the doctrine of substitution. It 'is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another' (Fireman's Fund Insurance Company vs. Hamila & Company, Inc., G.R. No. 27427, April 7, 1976).

'Subrogation is a normal incident of indemnity insuarnce(Aetna L. Ins. Co. vs. Moses, 287 U.S. 530, 77 L. ed.477). Upon payment of the loss, the insurer is entitled to be subrogated pro tanto to any right of action which the insured may have against the third perosn whose negligence or wrongful act caused the loss (44 Am. Jur. 2Nd 745, citing Standard Marine Ins. Co. vs. Scottish Metropolitan Assurance Co., 283 U.S. 284, 75 L. ed 1037)". (Ibid.)

'...when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. That right is not dependent upon, nor does it grow out of, any privity of contract, or upon written assignment of claim, and payment to the insured makes the insurer an assignee in equity (Shambley vs. Jobe Blackley Plumbing and Heating Co., 264 N.C. 456, 142 SE 2d 18). (Ibid.)'

Subrogation properly applies in this case. The defendants are legally liable to plaintiff People's Trans-East Asia Insurance under the present action.

Plaintiff-Inoc Spouses failed to support with competent proof their claim for moral, exemplary damages hence, they are not entitled to an award thereof. The court, however, shall award the agreed attorney's fees equivalent to thirty (30%) percent of the amount due.

WHEREFORE, upon the foregoing considerations, Judgment is hereby rendered –

Sentencing the defendants solidarily to pay plaintiff People's Trans-East Asia Insurance Corporation the sum of Php153,335.59 as reimbursement for the insurance indemnity paid by the latter for the repair of Inoc's Mitsubishi car; and

Sentencing the defendants solidarily to pay the sum of Php46,000.00, which is the amount equivalent to 30% of Php53,335.59, as attorney's fees, and the costs in this litigation.

The counterclaim is hereby dismissed.

SO ORDERED."

The defendants filed a Notice of Appeal[22] which was given due course by the trial court in its Order dated December 27, 2011.

Defendants-appellants assign the following reversible errors[23] allegedly committed by the trial court:

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I. The lower court erred in not dismissing the case as it had no jurisdiction over the complaint of plaintiff-appellee People's Trans-East Asia Corp. and since the complaint was not signed or verified by an authorized representative of the plaintiff corporation.

II. The lower court erred in not dismissing the complaint of plaintiff-appellee People's Trans-East Insurance Corp. as there was no authorized representative who signed the verification and certification of non-forum shopping of the said complaint;

II. The lower court erred in not dismissing the complaint against defendant-appellant William Tiu who is not the real party-in-interest in this case;

IV. The lower court erred in not finding that plaintiff-appellee Antonio Ynoc was guilty of reckless imprudence or contributory negligence;

V. The lower court erred in not finding that defendant-appellant William Tiu had exercised the due diligence of a good father of a family in the selection and supervision of the drivers of Rough Riders, Inc., including defendant-appellant Randy L. Demape;

VI. The lower court erred in finding that defendant-appellant William Tiu is liable to plaintiffs-appellees;

VII. The lower court erred in awarding damages, attorney's fees and costs of litigation.

Argument for the Appellants

Records show that the complaint in so far as plaintiff-appellee corporation is concerned was not signed or verified by an authorized representative of People's Trans East Asia Insurance Corp. While there was a verification and certification in the complaint, the same pertains only to plaintiff-appellee Ynoc who clearly signed for himself and not for and on behalf of plaintiff-appellee corporation. The filing of the complaint as far as plaintiff-appellee corporation is concerned is unauthorized and should be dismissed for lack of jurisdiction. The defendants-appellants rely on Cosco Philippines Shipping, Inc. vs. Kemper Insurance Company[24] where the Supreme Court ruled that “an unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint of the plaintiff.”

The defendant-appellant Tiu also argues that he is not the real party-in-interest as he is not the employer of defendant-appellant bus driver, Randy Demape, but Rough Riders, Inc., which is the registered owner of the passenger bus that hit the vehicle of the plaintiff-appellant Ynoc as shown by LTO Official Receipt MVRR 41931592 dated May 8, 1996[25] and LTO Certificate of Registration CR No. 30272343[26]. Nevertheless, defendant-appellant William Tiu submits that he should not be held solidarily liable to pay damages, attorney's fees and costs of litigation for he has established the diligence of a good father of a family in the selection and supervision of the drivers of Rough Riders, Inc.[27]

The defendants-appellants assail the trial court's conclusion that appellant Demape was negligent in driving the passenger bus that hit the plaintiff-appellee Ynoc's vehicle as it is not supported by evidence. Appellants argue that the plaintiff-appellees' evidence point to no specific circumstance about the incident other than that the passenger bus suddenly appeared from behind a blind curve. Appellants insist that what happened was pure accident. Even the lower court stated in its Decision stated as much when it ruled that “the accident happened as Inoc (sic) approaching the curve”[28]. If it was an accident, then there is neither negligence nor reckless imprudence on the part of defendant-appellant Demape. Appellants argue that plaintiff-appellee Ynoc was guilty of reckless imprudence because he did not stop his car and instead continued on its way despite the fact that defendant-appellant Demape had already blown his horn and as a consequence, Ynoc's car bumped the passenger

bus. The lower court should have declared plaintiff-appellee Ynoc liable to defendant-appellant William Tiu for damages, attorney's fees and litigation expenses.

The appellants submit that there is neither legal nor factual basis for the award of actual damages in the amount of Php153,335.59 as reimbursement to plaintiff-appellee corporation. Witness, Ramon Aguilar, was not authorized to testify for and on behalf of plaintiff-appellee corporation and hence, could not prove that plaintiff-appellee corporation was subrogated to the rights of plaintiffs-appellees Ynoc and entitled to reimbursement, attorney's fees and cost of litigation. Appellees failed to show any board resolution or Secretary's certificate authorizing witness Aguilar to testify for and on behalf o the plaintiff-appellee corporation.

The Release of Claim[29] was objected to by the appellants for being incompetent and defective as it was only signed by plaintiff-appellee Antonio Ynoc. Further, it is clear from the said Release of Claim that plaintiff-appellee corporation was not named on the blank space provided and hence, it was subrogated to the rights of recovery on all claims, demands and right to initiate action against defendants-appellants. The Letter of Authority[30] is hearsay evidence as Ernesto Del Rosario, the AVP for Visayas Operations of plaintiff-appellee corporation who signed the said letter was not presented to identify the said Exhibits and affirm the contents thereof. It is just a mere authority and not evidence that plaintiff-appellee corporation paid the amount of Php153,335.59.. The Letter of Authority presented by the plaintiff-appellee corporation is not the receipt or voucher showing the said payment.

Finally, defendants-appellants contend that there is neither legal nor factual basis for the award of attorney's fees. The lower court did not state any reason why it awarded attorney's fees in the amount of Php46,000.00, which runs counter to established jurisprudence which requires trial courts to make express findings of facts and law to justify an award of attorney's fees.

Argument for the Appellees

The appellees argue that while it is true that complaint was verified only by co-palintiff Antonio Ynoc and plaintiff-appellee corporation had failed to make a verification of the complaint such verification is not required. The causes of action alleged in the complaint subject of the appeal are the kind that under the rules, need not be verified. As provided for under Sec. 4, Rule 7, verification of a complaint or pleading shall be made only when the law or rule specifically requires it. Even on pleadings where verification is required, the insufficiency or lack of verification does not affect the jurisdiction of the lower court because such requirement is merely formal and not jurisdictional.

The plaintiffs-appellees also argue that while it is true that the complaint, in so far as plaintiff-appellee corporation is concerned, did not contain the certification against forum shopping required by Sec. 5, Rule 7 of the Rules of Court, nevertheless, the defendants-appellants cannot seek relief from such technical defect because during the trial of the case they did not raise such issue, by way of an affirmative defense or by filing a motion to dismiss. Motion and hearing is required for defendants-appellants to avail of such relief for dismissal of the complaint for failure to attach a certification against forum shopping. The requirement for the certificate of non-forum shopping is mandatory but not jurisdictional. That is why it should be timely brought up, upon motion, during the course of proceedings before the trial court.

The defendants-appellants reliance on the ruling of the Supreme Court in Cosco Philippines Shipping, Inc. vs. Kemper Ins. Co.[31] is misplaced considering that the issue of jurisdiction over the plaintiff-appellee corporation's complaint is now being raised for the first time on appeal and only after the lapse of fourteen (14) years from the time the complaint was filed on July 24, 1997. In the Cosco case, the issue of jurisdiction was challenged as early as the pre-trial stage. Moreover, defendants-appellants are barred from questioning the

authority of the court to hear the case at this stage of the appeal due to express waiver when the appellants, in paragraph 2 of their verified answer, admitted that the “parties plaintiffs and defendants have the capacity to sue and be sued.” This admission by defendants-appellants constituted a waiver of their right to question the jurisdiction of the court over the person of the plaintiff corporation.

Plaintiffs-appellees argue that the defendant-appellant William Tiu is estopped from denying the fact that he is the employer of defendant-appellant bus driver, Randy Demape. Appellant Tiu's assertion that he is not the real party-in-interest in this case is belied by the admissions of the defendants in the verified answer wherein appellants admitted, inter alia, paragraph V of the complaint. Moreover, appellant Tiu's belated assertion that he is not the real party-in-interest is contradicted by his assertion in the verified answer that: “Defendant William Tiu has religiously and diligently exercised his responsibilities in the selection and supervision of his drivers including defendant Demape”[32]. The aforequoted statement is a clear admission that he is the employer of defendant Randy Demape.

The Certificate of Registration bearing No. 30272343[33] was issued on March 27, 1997 only. It showed that a Hino TB-Hire with plate no. GVE 205 is owned by Rough Riders, Inc. It is an admission that the passenger bus driven by Randy Demape in the incident subject of the case became the property of Rough Riders, Inc. only on March 27, 1997. The vehicular accident subject of this case occurred on November 2, 1996.

The plaintiffs-appellees were able to establish by preponderance of evidence the sole negligence and liability of defendants. To establish their case, plaintiffs-appellees presented Antonio Inoc, PO2 Crescente B. Armamento and Ramon Aguilar. Also, documentary evidence were presented and offered as Exhibits “A” to “J”. Preponderance of evidence is determined by the guidelines provided in Section 1, Rule 133 of the Rules of Court. By contrast, defendant-appellant William Tiuhad failed to exercise the diligence of a good father of a family in the selection and supervision of defendant-appellant Randy Demape. Thus, as employer, he is jointly and solidarily liable.

Assailing the competence of witness Ramon Aguilar to testify for and on behalf of plaintiff-appellee corporation is misplaced. Defendants-appellants have not presented any particular law requiring an employee of an insurance company to present a board resolution or secretary's certificate before he can attest to court the fact that there was an own damage claim by an insured and that it was paid. Ramon Aguilar was a competent witness. He testified that he is the Underwriter Bonds Assistant of Peoples Trans-East Asia Insurance Corp. He was the one who prepared the letter of authority for the repair of the car and he knew very well the cost of repair. He explained the sharing in the payment of the repair.

Finally, the plaintiffs-appellees assert that the award of attorney's fees and costs of litigation was proper. The records show that plaintiffs-appellees were compelled to litigate because of the former's unjustified refusal to admit liability. To be indemnified of the damages sustained by the Mitsubishi car, there is no other legal remedy except to go to court. The award of attorney's fees finds its legal basis in paragraph 2 of Art. 2208 of the Civil Code which provides that, absence of stipulations notwithstanding, attorney's fees and expenses of litigation may be recovered when defendant's act or omission has compelled the plaintiff to litigate with third persons to protect his interest.

The Court's Ruling

On the issue of lack of jurisdiction

The Court finds for the appellees.

It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that the failure to

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comply with this requirement cannot be excused.[34] The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.[35] In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents.[36]

A perusal of the records show that only the plaintiff-appellee Antonio Ynoc signed the Verification and Certification attached to the Complaint[37] dated July 4, 1997. The plaintiff-appellee People's Trans-East Asia Insurance Corp., did not sign the said Verification and Certification attached to the Complaint[38] dated July 4, 1997. The same Certification of Non-Forum Shopping also does not show that the plaintiff-appellee Antonio Ynoc was specifically authorized by the co-plaintiff corporation through a board resolution to sign the said Verification and Certification on behalf of the corporation.

In Tamondong v. Court of Appeals[39], the Supreme Court held that if a complaint is filed for and in behalf of the plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff.[40]

While there is jurisprudence which allows substantial compliance with the rule on certification of no-forum shopping; however, the exceptional circumstances and/or social justice considerations present in those cases are not present in this case. The words used in plaintiff-appellee corporation's verification and certification of no-forum shopping clearly state that Ynoc solely caused the preparation of the complaint as one of the co-plaintiffs. There is nothing in the certification to even remotely suggest that Ynoc was also executing the certification against forum shopping for and on behalf of People's Trans-East Asia Insurance, Corp. There was also no belated filing of a proper verification and certification, or even a copy of the board resolution or a secretary’s certificate attesting that Ynoc was authorized to file said complaint for the co-plaintiff corporation.

The appellees argue that while it is true that it was only the plaintiff-appellee Ynoc who signed the certification of non-forum shopping, the appellants cannot be allowed to defeat the appellees' cause by belatedly raising the issue of lack of jurisdiction. Invoking the principle of estoppel by laches laid down in the classic case of Tijam vs. Sibonghanoy[41], appellees point out that the appellants had actively participated in the proceedings before the trial court.

The issue of the trial court's jurisdiction over the plaintiff corporation's complaint was neither raised in the appellants' affirmative defenses nor in a motion to dismiss or even in a motion for reconsideration after the trial court rendered the appealed judgment. The appellants only invoked lack of jurisdiction for the first time on appeal and only after fourteen (14) years have passed since the initiation of the complaint.

To be sure, the principle laid down in Tijam vs. Sibonghanoy[42] is only an exception to the general rule that lack of jurisdiction may be raised at any time and even for the first time on appeal. The Supreme Court in the case of Metromedia Times Corporation v. Pastorin[43], where the issue of lack of jurisdiction was raised only in the National Labor Relations Commission (NLRC) on appeal, we stated, after examining the doctrines of jurisdiction vis-à-vis estoppel, that the ruling in Sibonghanoy stands as an exception, rather than the general rule. Metromedia, thus, was not estopped from assailing the jurisdiction of the labor arbiter before the NLRC on appeal.[44]

In Regalado v. Go,[45] the Supreme Court emphasized that laches should be clearly present for the Sibonghanoy doctrine to be applicable thus. Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case. In such controversies, laches should have

been clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.[46]

In Sibonghanoy, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. In this case, the defendants-appellants actively participated in the proceedings before the trial court and sought affirmative relief therefrom and raised the issue of lack of jurisdiction only after the trial court rendered its adverse decision. Lack of jurisdiction is now being raised by the defendants-appellants for the first time on appeal and only after the lapse of 14 years since the inception of this case.

It is clear to this Court that the defendants-appellants, knowing their rights, have not sought to enforce them even if they had every chance to do so – in their affirmative defenses, in a motion to dismiss, even by filing a motion for reconsideration of the judgment appealed herein – until after they lost their case before the trial court. This Court considers it to be patent and revolting inequity and unfairness of having the the plaintiffs-appellees go up their Calvary once more after more or less 14 years of protracted litigation.

On the issue of whether or not William Tiu is the real party-in-interest

In an effort to evade liability, defendant-appellant Tiu insists that he is not the real party-in-interest in this case since the D' Rough Riders passenger bus bearing plate number GVB-205 is supposedly owned by Rough Riders, Inc., a corporation invested by law with legal personality separate and distinct from those acting for and on behalf and, in general, from the people comprising it[47].

However, the appellant Tiu cannot take legal refuge behind the doctrine of corporate fiction after he made a judicial admission in his verified Answer48, that he is the public utility operator of the D' Rough Riders passenger bus bearing plate number GVB-205 that hit the plaintiff Ynoc's Mitsubishi Pajero.

The plaintiffs, in paragraph V of the Complaint, allege, to wit:

> V
>
> Defendant William Tiu is a public utility bus operator under the name and style “D' Rough Riders” plying the route from Cebu City to Bogo, Cebu, and other northern towns, and vice-versa, one of which is a truck bearing plate no. GVB-205.

On the other hand, the defendant Tiu, in his Answer, made the following admission:

2. Allegations in pars. II, III. V are admitted.

Judicial admissions are legally binding on the party making the admissions. The Supreme Court, in Alfelor v. Halasan[49], Court declared that a party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy.

Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.

Even if the trial court had looked past William Tiu's judicial admission and uphold his theory that Rough Riders, Inc. is the real party-in-interest as it is owner of the passenger bus that hit plaintiff-appellee Ynoc's Mitsubishi

Pajero, still, the documentary evidence on record would not support such theory.

A close examination of the Certificate of Registration No. 30272343[50] submitted by defendant-appellant shows that a vehicle bearing chassis number FF177-10010 with plate number GVE-205 is registered under the name Rough Riders, Inc. But said vehicle is not the same passenger bus subject of this case. The D' Rough Riders passenger bus that hit the plaintiff Ynoc's vehicle bears plate number GVB-205 with chassis number FF177-10019[51] Obviously, the vehicle referred to in the certificate of registration (Exhibit “5”) and the vehicle referred to in the official receipt (Exhibit “4”) are two different vehicles. Without the certificate of registration for the passenger bus bearing plate number GVB-205, there would have been no way for the trial court to determine whether or not the motor vehicle that hit the plaintiff-appellee Ynoc's Mitsubishi Pajero belonged to Rough Riders, Inc. as postulated by defendant-appellant Tiu.

On the issue whether or not defendants-appellants liability was established by preponderance of evidence

In determining as to who between the plaintiff Ynoc and defendant Demape was negligent, the trial court made the following findings:

> “The evidence on record has established that on November 02, 1996, at about 9:00 in the morning, plaintiff Inoc drove his Mitsubishi car at Barangay Dumlog, Sogod, Cebu, going north to Bogo, Cebu. It was an uphill road. Only the left lane of the road was open and passable as the right lane was then being constructed. While travelling slowly and approaching the end of the road that curved towards the right, he saw the passenger truck bearing plate no. GVB-205, then being driven by defendant Randy L. Dimape, suddenly appear from behind the curve and running downhill from the opposite direction. It was full of passengers. Left with no way to maneuver, as he was caught between the mountainside on one side and the road construction on the other, Inoc pulled his car to a full stop. The truck bumped the Mitsubishi car head-on resulting in serious damage to the latter as shown in Exhs. 'C', 'D' and 'E'.”[52]

The appellants however submit that it was plaintiff-appellee Ynoc who was guilty of reckless imprudence because he did not stop his car but continued on its way despite the fact that defendant-appellant Demape had already blown his horn and as a consequence, his car bumped the passenger bus. Appellant's rely on the testimony of defense witness Nestor Erejer who testified that the passenger bus entered a one-lane road and as they were about to make an exit, the bus met a Pajero which was ascending on the one-lane road, the bus driver blew his horn but the Pajero continued on its way and so the Pajero bumped the Rough Riders bus.[53] In short, the appellants' theory is that, since both vehicles, coming from opposite directions, were traversing a single-lane road, plaintiff Ynoc should have given way to the defendant-appellant's passenger bus and if anyone was at fault, it was the plaintiff Ynoc because he did not give way to the passenger bus.

An independent review by this Court of the evidence on record reveals that:

1. The Mitsubishi Pajero driven by the plaintiff-appellee Ynoc was traveling north-bound towards Bogo, Cebu on an uphill, single-lane road; while the D' Rough Riders passenger bus driven by defendant-appellant Demape was traveling from the opposite direction towards Cebu City and was going downhill on the same single-lane road being traversed by the plaintiff-appellee Ynoc;[54]

2. The total distance of the single-lane road where the accident occurred measured from end to end by PO3 Crescente Armamento is 1,446 inches[55];

3. The Mitsubishi Pajero driven by plaintiff-appelle Ynoc had already traveled 931.5 inches from the end of the single-lane road going north-bound towards Bogo, Cebu when the collision with the passenger bus occurred[56];

4. The D' Rough Riders passenger bus driven by defendant-appellant Demape had already traveled 91.5 inches

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from blind curve of the single-lane road going towards Cebu City when the collision with the passenger bus occurred;

It is clear from the foregoing facts that the Mitsubishi Pajero had the right of way because 1) the Mitsubishi Pajero was going uphill; and 2) the Mitsubishi Pajero had covered more than half way – 931.5 out of the 1,400 inches to be precise -- of the single-lane road. The passenger bus should have stopped and allowed the plaintiff's vehicle to exit the single-lane road as it had already seen the plaintiff's vehicle. Instead, the passenger bus, proceeded on its way and failed to avoid the collision even if it had the opportunity to do so.

In short, this Court finds neither rhyme nor reason in the appellants' umbrage over the lower court's findings. In so far as the negligence of defendant-appellant Demape and the consequent solidary liability of defendant-appellant Tiu are concerned, this Court finds the trial Court's ruling to be in accordance with the evidence on record and duly supported by the law on the matter as well as by established jurisprudence.

> “From the foregoing facts, it is clear and hardly disputable that Dimape was negligent in the way he drove the passenger bus and the serious damage caused to Inoc's car is attributable solely to his fault and reckless imprudence. Had he driven his car carefully and slowly, knowing as he did that he was negotiating a blind curve and mindful that another vehicle could be coming from the opposite side, as did happen, he could have timely applied his brakes upon seeing Inoc's car and avoided the accident. The court cannot give credence to the version of the defendants as it is not supported by the evidence. The sketch and the police report show that contrary to the claims of the defendants, the accident happened as Inoc was approaching the curve at the upper end of the road going to Bogo, Cebu and the truck had just entered it shortly after negotiating the curve. It was going downhill. The car was not traveling fast as it was traveling uphill. Besides, Inoc's family was with him, he had to drive carefully.
>
> 'Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi-delict x x x.' (Article 2176, New Civil Code) Such finding of negligence gives rise to the presumption of negligence on the part of his employer who has the burden of proving that it exercised due diligence in the selection and supervision of his employees (Pantranco North Express, Inc. vs. Baesa, G.R. No. 79050-51, November 14, 1989). Article 2180 of the New Civil Code. Provides that '(e)mployers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.'
>
> Admittedly, at the time of the accident, defendant Dimape was employed as driver of defendant William Tiu. William Tiu, therefore, as employer, is presumed to have been negligent in the selection and supervision of Dimape. It was his burden to overcome this presumption by competent proof of due diligence. According to his testimony, the usual routine he does when one applies as driver in his company is to conduct an interview on the applicant. Afterwards, the applicant is informed of the company rules and regulations and subjected to actual driving test and written examination. If he passes the tests, he undergoes training and then accepted for probationary employment for six (6) months before being admitted as regular driver. Tiu's testimony however was not corroborated or supported by other oral or documentary evidence. Obviously, such bare testimony is weak and insufficient to overcome the presumption of negligence on his part. As employer, Tiu's liability is direct and immediate; it is not conditioned upon prior recourse against the defendant employee (Dimape) and a prior showing of the insolvency of the latter (Kapalaran Bus Lines Coronado [sic], 176 SCRA 792). His liability is primary and solidary with that of his driver-employee Dimape (Rafael Reyes Trucking, Corp. vs. People of the Philippines, G.R. No. 129029, 3 April 2000).

On the issue of whether or not the award of attorney's fees was proper

However, this Court finds the award of attorney's fees to be without any factual or legal basis.

Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just, and demandable claim.[57] Still, the award of attorney's fees to the winning party lies within the discretion of the court, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. Further, the court should state the reason for the award of attorney's fees in the body of the decision. Its unheralded appearance in the dispositive portion is, as a rule, not allowed.[58]

WHEREFORE, this appeal is hereby PARTIALLY GRANTED. The Decision dated August 31, 2011 rendered by the Regional Trial Court of Cebu City Branch 20 in Civil Case No. CEB-20610 is hereby MODIFIED by deleting the award of attorney's fees for lack of factual and legal basis. The appealed decision is hereby affirmed in all other respect.

SO ORDERED.

Lagura-Yap, & Quijano-Padilla, JJ., concur.

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[1] Except for the misspelling appearing in the Decision of the trial court, defendant appellant Randy L. Demape's name appears as such in the Complaint, Answer as well as the evidence on record such as the Police Report found on pages 1, 23 and 112 of the original record respectively.

[2] Except for the misspelling appearing in the Decision of the trial court, Plaintiff-appellee Antonio Ynoc's name appears as such in the Complaint, Answer as well as the evidence on record such as the Police Report found on pages 1, 23 and 112 of the original record respectively.

[3] Penned by Judge Bienvenido R. Saniel, Jr..

[4] Original record, pp. 1-12.

[5] Original record, pp. 23-28.

[6] Original record, pp. 72-73, Pre Trial Order.

[7] Original record, page 108.

[8] Original record, page 109.

[9] Original record, page 110.

[10] Original record, page 111.

[11] Original record, pp. 112-113.

[12] Original record, page 114.

[13] Original record, page 115.

[14] Original record, page 116.

[15] Common Exhibit, original record page 109.

[16] Original record, page 153.

[17] Original record, page 154.

[18] Original record, page 154.

[19] Original record, page 155.

[20] Original record, page 157.

[21] Original record, pp. 158-168.

[22] Original record, page 211.

[23] Rollo, pp. 21-22.

[24] G.R. No. 179488, April 23, 2012.

[25] Exhibit 4, original record , page 154.

[26] Exhibit 5, original record, page 154, TSN, Deguit, 22 June 2006, pp. 6-7.

[27] See page 14, Decision.

[28] See page 16, Decision.

[29] Exhibits B and B1, original records, page 109.

[30] Exhibit H, original records, page 114.

[31] G.R. No. 179488, April 23, 2012.

[32] See par. 4, sub-paragraph 3 of Answer, original record, pp. 23-24.

[33] Exhibit 5.

[34] Negros Merchants Enterprises, Inc. vs. China Banking Corporation, G.R. No. 150918, August 17, 2007.

[35] Expertravel & Tours, Inc. v. Court of Appeals, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157, cited in Negros Merchants Enterprises, Inc. vs. China Banking Corporation, ibid.

[36] Ibid.

[37] Original record, page 6.

[38] Original record, page 6.

[39] G.R. No. 158397, November 26, 2004, 444 SCRA 509.

[40] G.R. No. 158397, November 26, 2004, 444 SCRA 509, 519.

[41] In Tijam v. Sibonghanoy, 131 Phil. 556 (1968), the Court held that a party may be barred by laches from invoking lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea of lack of jurisdiction.

[42] In Tijam v. Sibonghanoy, 131 Phil. 556 (1968).

[43] G.R. No. 154295, July 29, 2005, 465 SCRA 320.

[44] G.R. No. 154295, July 29, 2005, 465 SCRA 320, 337.

[45] G.R. No. 167988, February 6, 2007, 514 SCRA 616.

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[46] Regalado vs. Go, G.R. No. 167988, February 6, 2007, 514 SCRA 616.

[47] Bernadeth Londonio & Joan Corcoro vs. Bio Research, Inc. & Wilson Y. Ang, G.R. No. 191459, January 17, 2011.

[48] Original record, page 23-27.

[49] 520 Phil. 982 (2006)

[50] Exhibit “5”, original record, page 154.

[51] Exhibit “4”, original record, page 154, Exhibit “G” (Police Report), original record, page 112.

[52] Pages 15-16 of the Decision dated August 31, 2011.

[53] Pages 11-12 of the Decision dated August 31, 2011.

[54] TSN, June 27, 2000, pp. 8-11; TSN, May, 22, 2003, page 6.

[55] TSN, March 9, 2004, page 12.

[56] TSN, March 9, 2004, pp. 14-16; Exhibit “F”, original record, page 111.

[57] Article 2208, Civil Code of the Philippines.

[58] Pagsibigan v. People, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 258.

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