

PI LEASING CORPORATION, PLAINTIFF-APPELLEE, VS. DOMINION INSURANCE CORP. S, CHAIRMAN (NOW KNOWN AS STERLING INSURANCE AND COMPANY INC.), DEFENDANT-APPELLANT, JUAN DOMINO AND JOH...

Ponente: BARRIOS, J.

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BARRIOS, J.:

On appeal is the Decision dated February 28, 2005 of the Regional Trial Court of Pasay City (or RTC) in a suit for Sum of Money with Replevin filed by BPI Leasing Corporation (or BPI Leasing) against Dominion Insurance Corp. (or Dominion Insurance) now known as Sterling Insurance Co., Inc., Juan Domino (or Domino) and John Doe.

In its complaint it alleged that Dominion Insurance through its president Juan Domino leased a Mercedes Benz 100 (D) from BPI Leasing the terms of which were set down in their True Lease Agreement dated June 3, 1997 and Lease Schedule dated June 6, 1997. The lease period was five (5) years from June 6, 1997 until June 14, 2002, for a monthly rental of P17,396.00 for the first year after which the rental factor shall be reviewed and adjusted annually based on the prevailing BPI bank base rate plus 7% or 364 day T-Bill rate plus 9%, whichever is lower, or a total payment of P1,043,760.00. Dominion Insurance used the Mercedes Benz but failed to pay the rentals which as of September 15, 1998 amounted to P80,165.49. BPI Leasing demanded that it pay the arrears but Dominion Insurance failed and refused to do so prompting BPI Leasing to cancel or revoke the lease contract. Demand to return the vehicle was thereafter made but again Dominion Insurance failed and refused, and so BPI Leasing filed this suit.

Initially Dominion Insurance moved to dismiss the complaint on grounds of lack of jurisdiction, improper venue and forum shopping, but this was denied on October 15, 1999. Domino on the other hand did not file an Answer and so he was declared in default.

Dominion Insurance filed its Answer denying all the material allegations in the complaint and reiterating the grounds in its motion to dismiss. Also it averred that the contract of lease was in fact a sale of personal property on installments covered by the Recto Law and since BPI Leasing already opted to cancel the contract and demanded for the surrender of the vehicle, it cannot now sue to claim the balance or the stipulated loss value. Finally, BPI Leasing did not issue a disclosure statement in violation of RA No. 3765 and CB Circular No. 484 rendering illegal the contract of lease.

Dominion Insurance also moved to file a third-party complaint against City Concrete Corporation, but the trial court denied this.

On February 28, 2005 the trial court rendered its Decision decreeing that:

WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of the plaintiff and against the defendant Dominion Insurance Corp. ordering the latter to pay the plaintiff:

1) Eight Hundred Thousand Pesos (P800,000.00) with interest of 3% per month from October 1998 until fully paid; and

2) Twenty Thousand Pesos (P20,000.00) as attorney's fees.

Cost against defendant Dominion Insurance Corporation

SO ORDERED. (pp. 369-370, record)

Hence this appeal with Dominion Insurance assigning as the reversible errors committed that:

- THE LOWER COURT PALPABLY COMMITTED GRAVE ERROR IN NOT FINDING THAT DEFENDANT JUAN DOMINO HAD NO AUTHORITY TO ACT FOR AND IN BEHALF OF APPELLANT TO ENTER INTO A LEASE AGREEMENT, LEASE SCHEDULE AND CONTINUING SURETYSHIP AGREEMENT WITH APPELLEE RELATIVE TO THE MERCEDES BENZ 100 (D).

- THE LOWER COURT GRAVELY ERRED IN NOT HOLDING THAT THE AFOREMENTIONED CONTRACTS ARE NOT BINDING AND ENFORCEABLE ON APPELLANT AS IT IS NOT A PARTY THERETO AND IT HAD NOT AUTHORIZED DEFENDANT DOMINO TO ENTER INTO THE SAME IN ITS BEHALF.

- THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE DEFENSE OF LACK OF AUTHORITY OF DEFENDANT DOMINO TO ENTER INTO THE CONTRACTS WAS BELATEDLY RAISED BY THE APPELLANT.

- THE LOWER COURT GRAVELY ERRED IN FINDING APPELLANT LIABLE ON THE LEASE AGREEMENT ENTERED INTO BY DEFENDANT DOMINO AND APPELLEE, AND ORDERING APPELLANT TO PAY PHP800,000.00 WITH 3% INTEREST PER MONTH FROM OCTOBER 1998 UNTIL PAID.

- ASSUMING APPELLANT IS LIABLE UNDER THE CONTRACTS, THE LOWER COURT GRAVELY ERRED IN IMPOSING EXCESSIVE AND INIQUITOUS INTEREST OF THREE PERCENT (3%) PER MONTH ON THE PHP800,000.00 IT IS ORDERED TO PAY TO THE APPELLEE. (pp. 39-41, rollo)

Dominion Insurance posits that Domino is not authorized by its Board of Directors to enter into the lease agreement with BPI Leasing. It claims that the contract is personal to Domino, hence not valid and binding as to Dominion Insurance.

Notably the lack of authority of Juan Domino to enter to contract was not pleaded as a defense in the Answer (pp. 96-104, record) of Dominion Insurance. As the trial court aptly pointed out Dominion, in its Answer, alleged that the contract between the parties is covered by the Recto Law, it being a sale in installments. It may be well to note that Dominion did not allege the alleged lack of authority of Domino to sign the contract with BPI. It was only during the trial when Dominion raised said issue. Dominion was more emphatic on the alleged lack of authority of Domino when it filed its memorandum... (Decision, p. 366, record). Section 2, Rule 9 of the Rules of Court provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. It was certainly too late in the day for Dominion Insurance to raise it. This change of theory was made apparently after realizing the futility of its earlier defense, and is a clear indication that this defense was nothing but a mere concocted afterthought.

Besides, the argument of Dominion Insurance that Domino was not authorized to enter into lease contract fails to persuade. The fact that the contract was entered in its behalf was made abundantly clear by Dominion Insurance when it demanded the payment for the damages caused by City Concrete, Inc. on its leased MB Van 100 (Annex "C", TPC, p. 155, record) and from its third-party complaint against City Concrete Inc. (pp. 144A – 1151,

record).

Even assuming that Domino was not authorized by its Board of Directors, still BPI Leasing cannot be faulted for believing that Domino was authorized for Dominion Insurance did not object or repudiate the contract thus clothing its president with the apparent power to bind the corporation. It is a familiar doctrine that when a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus the corporation will, as against anyone who has in good faith dealt with it through such agent, be stopped from denying the agent's authority. Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy (*Eastwood Motor Industries, Corp. vs. Skunac Corp.*, G. R. No. 163994, Dec. 16, 2005).

In civil cases, the court must lean towards a party who successfully presents preponderance of evidence in its favor. In this case, the claim of BPI Leasing is amply supported by evidence while that of Dominion Insurance was not established by the opaque and ambivalent proofs it submitted.

In any event, We are called upon to essentially review the RTC's assessment of the weight of the evidence presented by both parties. But the matter of giving credence to evidence presented is best addressed to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have appeared before him (*Heirs of Oclarit vs. Court of Appeals*, 233 SCRA 239). Indeed this rule is subject to well-recognized exceptions, but Dominion Insurance failed to prove that this case falls under one of them. We have meticulously examined the records before Us and found no error of substance committed by the RTC to warrant an overthrow of the appealed Decision.

The claim of Dominion Insurance that the interest rate imposed is inequitable and unconscionable has to be rejected too. The rate of interest was agreed upon by the parties freely, and significantly Dominion Insurance did not question that rate. It is not for the Court to change the stipulations in the contract when it is not illegal. Article 1306 of the New Civil Code provides that contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy (vide: *Security Bank and Trust Company vs. RTC Makati*, 263 SCRA 483).

WHEREFORE, finding no reversible error, the appealed Decision is AFFIRMED and the appeal is DISMISSED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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