

THE UNION INSURANCE SOCIETY OF CANTON, PETITIONER, VS. THE COURT OF APPEALS AND FAR EAST CHEMCO LEASING AND FINANCING CORPORATION, RESPONDENTS.

G.R. No. 100319. August 08, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

This petition for review on certiorari seeks to reverse and set aside the decision dated March 12, 1991 of the Court of Appeals[1] in CA-G.R. CV No. 16981, which reversed the decision dated January 2, 1985 of the Regional Trial Court of Makati, Branch CXLIV in Civil Case No. 6487.

The undisputed facts as stated by the trial court and reproduced by the respondent Court of Appeals in its decision are as follows:

"This is an action filed by the plaintiff The Union Insurance Society of Canton, Ltd., a foreign corporation duly authorized to do business in the Philippines, against the defendant The Far East Chemco Leasing Corporation, a domestic corporation organized in accordance with the laws of the Philippines. The complaint prays that the defendant be ordered to return to the plaintiff certain vessels or their value plus damages and attorney's fees.

"The record discloses that upon being served summons on March 5, 1984, the defendant, through counsel, filed a motion for extension of time to file its answer which was granted by the Court giving the defendant an extension of 15 days from March 20, 1984 within which to file its answer. However, despite the said extension it prayed for and granted by the Court, the defendant failed to file an answer thereby prompting the plaintiff to move that the defendant be declared in default which the Court granted and at the same time authorizing the plaintiff to present its evidence ex parte.

"Subsequently, the defendant filed a motion to set aside the order of default and the plaintiff filed an opposition thereto. However, at the scheduled hearing of the said motion on June 1, 1984, the defendant's counsel instead manifested that the defendant will submit a proposal for an amicable settlement of the case with the plaintiff for which reason the hearing of the defendant's motion was reset to June 29, 1984, at 2:00 p.m., but when the motion was called for hearing the defendant's counsel failed to appear despite previous notice in open Court. Having found the grounds of the said motion unmeritorious, the Court resolved to deny the same.

"It appears that on March 11, 1976, the Union Insurance Society of Canton, Ltd., through its general agent, Ker & Co., as insurer subrogee of Litton Mills, Inc. (Consignee), filed a complaint for damages with the former Court of First Instance of Manila docketed therein as Civil Case No. 101598 against the Philippine Tugs, Inc., a corporation engaged in carrying goods on lighters from vessels anchored in Manila Bay to any part of the Philippines. On July 19, 1977, the said Court rendered judgment in favor of the plaintiff and against Philippine Tugs, Inc. ordering the latter to reimburse to the plaintiff as subrogee the amount of P1,849,044.23 with legal interest from the date of the filing of the complaint until full payment thereof plus costs. For a better understanding of the facts of that case and what gave rise to the said action and the award of damages to the plaintiff, pertinent excerpts of the said Court's decision (Exh. A) are quoted as follows:

‘On September 5, 1975, the defendant entered into a contract with Litton Mills, Inc. for the former to lighter the cargo of said Litton Mills Inc. consisting of 2,045 bales of compressed cotton from SS "Pres. Magsaysay," which was then moored at the Manila South Harbor, and its destination was Magallanes Drive. In accordance with this agreement, the defendant dispatched its barge, the Ben Michael II to the Manila South Harbor and received from the SS "Pres. Magsaysay" 2,045 bales of compressed cotton for delivery to Litton Mills, Inc. This shipment of 2,045 bales of cotton was insured by Litton Mills, Inc. with the plaintiffs. On October 14, 1975, Litton Mills Inc. sent four formal claims to plaintiff, Ker & Co. Ltd. (Exhibits "E" to "E-3"), informing the latter that of the total cargo of 2,045 bales, only 2,036 bales were delivered and there was a shortage of nine bales and that out of the 2,036 bales, 521 bales were totally damaged by seawater and stains and therefore, no longer usable. That the total value of the lost and damaged bales of cotton was P1,849,044.23. Similar demands were made by Litton Mills Inc. to the defendant, Exhibits "F-3". When the defendant refused to pay the alleged damaged, the plaintiffs paid to Litton Mills, Inc. the total demand of P1,849,044.23 (Exhibits "H" to "H-3") and the defendant was accordingly advised of this payment, Exhibit "I" to "I-3". On February 25, 1976, the plaintiff, thru its counsel, wrote a letter to the defendant, (Exhibit "M") informing the latter that they have paid Litton Mills, Inc. the amount of P1,849,044.23, at the same time as the subrogee, seeking reimbursement of the amount for the reason that the shortage and damage was defendant's responsibility. On March 2, 1976, the defendant, thru its counsel (Exhibit "6"), answered, totally denying responsibility of the ordinary claims for loss or damage to the cargo. In other words, the plaintiff claims that the defendant actually received 2,045 bales of cotton from the SS "Pres. Magsaysay," but it only delivered 2,036 bales to Litton Mills, Inc., thus having a shortage of nine bales, and further, out of the 2,036 bales, 521 bales were in bad order condition because they were damaged by seawater when they were in the possession of said defendant. That by virtue of the contract between Litton Mills, Inc. and the latter is liable as a common carrier as provided for under Article 1735, 1736 and 1737 of the New Civil Code.’

"The dispositive portion of the decision of the CFI of Manila presided over by Hon. Alfredo C. Florendo reads:

‘WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment in favor of the plaintiff and against the defendant, and the latter is hereby ordered to reimburse to the plaintiff, as subrogee, the amount of ONE MILLION EIGHT HUNDRED FORTY NINE THOUSAND FORTY FOUR PESOS & 23/100 (P1,849,044.23), with legal interest from the date of full payment and to pay the costs.’

"The Philippine Tugs, Inc. appealed the said decision to the then Court of Appeals docketed therein as CA-G.R. No. 63144-R, but it was affirmed in toto by the Court of Appeals in the latter's decision promulgated on September 29, 1982 (Exh. B). x x x"

"The evidence on record consisting of the articles of incorporation and other documents from the Securities and Exchange Commission disclose that Angel T. Rodriguez was the Vice-President and Treasurer and at the same time a director of the Philippine Tugs, Inc. while Julian R. Cordero and Francisco Y. Wong were also directors (Exh. C), and all the three of them were the controlling stockholders of the said corporation it appearing that of the P60,000.00 subscribed capital stock (60,000 shares at the par value of P1.00 per share), they owned P15,000.00, P12,000.00 and P13,000.00 worth of stock, respectively, or 40,000 of 60,000 shares or roughly 67% of the subscribed capital stock (Exhs. C, C-1 to C-8).

"These three persons likewise appear to be the controlling stockholders of another corporation, the Valenzuela Watercraft Corporation, it being also disclosed by the documents on file with the SEC that Julian R. Cordero was its president, Angel T. Rodriguez, its Vice-President, and Francisco Y. Wong, its treasurer-secretary (Exh. D-2); and of the 2,000 subscribed capital stock worth P200,000.00 (at the par value of P100.00 per share) Angel T. Rodriguez owned 500 shares worth P50,000.00; Julian R. Cordero, 400 shares worth P40,000.00; and Francisco Y. Wong, 700 shares worth P70,000.00 - a total of 1,600 shares worth P160,000.00 - or 80% of its subscribed capital stock (Exhs. D, D-1 to D-12).

"In the meantime, during the pendency of the said action in the CFI of Manila, the Philippine Tugs, Inc.,

through the said Angel T. Rodriguez, Julian R. Cordero and Francisco Y. Wong who as aforesaid altogether owned 67% of the subscribed capital stock of the said corporation, transferred a number of its vessels including its tugboat 'M/T Legionaire,' formerly known as 'Sea Rover,' its tugboat 'M/T Centurion,' formerly known as 'Good Hope,' and the barge 'Pencar 1311,' formerly known as 'Ben Michael,' as shown by a Deed of Absolute Sale dated September 30, 1976 (Exh. G), to the said Valenzuela Watercraft Corporation 80% of the subscribed capital stock of which as aforesaid was also owned by the aforementioned stockholders of the Philippine Tugs, Inc.

"Soon after the promulgation of the said judgment by the CFI of Manila on July 19, 1977, what the plaintiff through its counsel did was to cause the said judgment to be annotated on the titles to the said tugboats and barge pursuant to the letter of the plaintiff's counsel addressed to the Administrator of the Maritime Industry Authority dated August 2, 1977 and received by the said office on August 4, 1977 (Exh. F). Likewise, the plaintiff's adverse claim on the said vessels was annotated in the Registration and Licensing Section of the Philippine Coast Guard on October 17, 1977 (Exh. G). Despite the said notice of the judgment and annotation, however, of the plaintiff's adverse claim, the herein defendant Far East Chemco Leasing Corporation still bought the aforesaid vessels on September 7, 1978 from Valenzuela Watercraft Corporation (Exh. G, Exhs. H and H-1), and subsequently sold the same vessels on May 27, 1980 to Peninsula Tourist Shipping Corporation (Exh. E). Hence, this action brought by the plaintiff against Far East Chemco Leasing Corporation.

"The documentary evidence presented by the plaintiff consists of certified copies of the original with the exception of Exhs. F and G which were identified by Atty. Alejandro B. Elmido, an associate in the law office of the plaintiff's counsel, Atty. Alfonso Felix, Jr.

"The plaintiff likewise presented Mr. Emilio Ramos, 60 years of age, and a marine surveyor engineer. He has been one of the appraisers of the Hull Pool of the Philippines, an association of insurance companies which have pooled their resources in covering up hull and cargo insurance. He holds the position of vice president and marine manager of the Manila Adjusters and Surveyors Company which is considered the largest firm in its field of work in the Philippines. Mr. Ramos has had thirty-seven years of practice and experience behind him during which span of time, he has surveyed over five thousand (5,000) vessels. And based on his extensive experience, he gave his expert opinion that 'M/T Legionaire,' formerly known as the 'Sea Rover' should now be worth P650,000.00, the 'M/T Centurion,' formerly known as the 'Good Hope' should now be worth P1,500,000.00, while the barge 'Pencar' formerly known as 'Ben Michael' should now be worth P450,000.00 - or a total of P2,600,000.00 for the three vessels. (t.s.n., April 26, 1984, p. 7)

"Lastly, the plaintiff's counsel, Atty. Alfonso Felix, Jr., took the witness stand. He declared that before filing this case, he tried repeatedly to communicate with the defendant for the purpose of settling the same, but without any result. His agreement with his client is that he will receive 20% of the value of the vessels by way of attorney's fees. (t.s.n., April 26, 1984, p. 8)" (Decision of the Regional Trial Court, pp. 1-8; Original Record, pp. 198-206)

Evaluating the evidence before it, the trial court sustained the claim of Union Insurance that the transfer made by Philippine Tugs, Inc. of the said tugboats and barge to Valenzuela Watercraft Corporation was made fraudulently and, thus, after disregarding the fiction of the corporate entities of the two corporations, it declared said transfer as invalid. Likewise, the trial court ruled that the subsequent sale of the tugboats and barge made by Valenzuela Watercraft Corporation to Far East Chemco Leasing Corporation was fraudulent and that the latter corporation was a party to the fraud. Considering that the said water vessels were subsequently sold by Far East Chemco to Peninsula Tourist Shipping Corporation which is not a party to the case and, therefore, cannot be returned to the plaintiff, the trial court resolved that the value of said water vessels instead which is now worth P2,600,000.00 be returned to the plaintiff. And lastly, the trial court found that the Union Insurance is entitled to its claim for attorney's fees because of the unjustified refusal by Far East Chemco of the former's demand for payment. The trial court rendered judgment, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay the former:

"1) the sum of P2,600,000.00 representing the value of the three vessels in question with legal interest from September 7, 1978 until the amount is fully paid;

"2) the sum equivalent to 20% of the total amount due as attorney's fees, plus;

"3) the costs of the suit.

"SO ORDERED." (Decision, p. 16, Record, p. 214)

On appeal by Far East Chemco Leasing and Finance Corporation to the respondent Court of Appeals, the latter reversed the trial court's decision and dismissed the complaint.

Hence, the instant petition.

Petitioner did not make any formal assignment of errors but in lieu thereof the petitioner imputes to respondent court the error of:

1. sustaining respondent's allegation that the trial court erred in declaring respondent liable to petitioner for the value of the subject vessels despite the fact that petitioner's claim is based on a lien.

and

"2. sustaining Far East Chemco's allegation that the trial court erred in awarding attorney's fees equivalent to 20% of the total amount due notwithstanding the fact that the case below was based on an ex-parte proceedings."

Petitioner posits the following allegations: that it is a principle of law that when an Affidavit of Adverse Claim is filed giving notice to the whole world that there is a case in court involving certain property or properties, any person purchasing such properties or acquiring an interest on the same does so at his own peril; that in this particular case, there can be no question that Far East Chemco had notice of the lien on the vessels; that the Court of Appeals in the decision under review held that Far East Chemco had by intervening in all these transactions made itself a party to the fraud committed by PTI on its creditor, the herein petitioner; that "the proper remedy is not an action for rescission but merely a return of the vessels or their value which is precisely what our original complaint seeks for the transfer to Far East Chemco is not only voidable but is null and void"; that Far East Chemco deprived them of property which they were entitled to execute for the satisfaction of the final judgment in their favor; that since the vessels cannot now be returned, because they are nowhere to be found and due to the lapse of time, even if they were found, they would now be a mass of junk, Far East Chemco is bound to pay them the value of the vessels, with interest, attorney's fees and costs.

Petitioner further avers that the reason given by the respondent Court for dismissing the complaint despite its finding that Far East Chemco acted with fraud has no value in law. According to petitioner, to reason that instead of filing an Affidavit of Adverse Claim, they should have filed a petition for attachment or Lis Pendens is purely and simply a groping about for technicalities and, technicalities have no place in the administration of justice.

We find the petition without merit.

While Far East Chemco, as a buyer of the vessels purchased the same at its own risk, the assumed risk pertains only to the possibility of the sale being rescinded. It is error to make private respondent pay petitioner the value of the three (3) vessels or to order the return of the vessels to petitioner without the sale first being rescinded.

The vessels are no longer owned by private respondent. When petitioner filed the complaint on February 21,

1984, it was already aware that the vessels have been sold by private respondent to Peninsula Tourist Shipping Corporation on May 27, 1980.[2] Yet petitioner did not implead Peninsula Tourist Shipping Corporation as a co-defendant of Far East Chemco.

Petitioner Union Insurance contends that technicalities have no place in the administration of justice. But petitioner, who did not cause the attachment of PTI's properties to forestall its sale, cannot be given its justice at the expense of others, namely: 1.) Peninsula Tourist Shipping Corporation who cannot be bound by an adverse decision in a case where it was not given a chance to defend itself[3] and 2.) private respondent who should not be made to pay another's indebtedness in the absence of showing that PTI, the judgment debtor, has not paid petitioner or that PTI has no other properties to answer for its liabilities to the petitioner. To order private respondent to pay petitioner the value of the vessels is one without legal basis and could result in unjust enrichment of petitioner.

Furthermore, as aptly stated by the respondent court and we quote:

"Has appellee shown in this case that it is entitled to rescind the said fraudulent transaction? We find in the negative. The plaintiff asking for rescission must prove that he has no other legal means to obtain reparation. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same (Article 1383, Civil Code). Appellee has failed to adduce sufficient and convincing evidence showing that it had pursued all available legal remedies against PTI's properties in order to satisfy its claims against the latter. Neither is it shown that the vessels subject of the dispute were the only assets of PTI.

"Hence, there being insufficient basis to allow appellee to rescind the sale of the vessels subject of the dispute to appellant, the latter's acquisition thereof albeit rescissible should be upheld binding and valid until legally rescinded and appellant have no obligation to appellee to return the said vessels or to pay the value thereof. Therefore, We find the lower court's order to appellant to pay for the value of the said vessels to appellee erroneous and not in accordance with law."[4]

An assiduous scrutiny of the records reveals that some of the issues raised in the case at bar are factual and as such are not germane in a petition for review on certiorari. In *Go vs. Court of Appeals*, we ruled, thus:

"We have consistently stressed in a long line of decisions that the resolution of factual questions is the primacy and often the final task of the lower courts. This Court is not a trier of facts. The ascertainment of what actually happened in a controverted situation is the function of the trial court. And its findings thereon are received with much respect, if indeed not considered conclusive, by the appellate court.

"The reason for this policy is that this court is not supposed to re-try every case that comes before it on certiorari. This would not only prolong the judicial process but also unduly imposed on this court which is burdened enough as it is with its heavily clogged dockets."[5]

ACCORDINGLY, the decision appealed from dated March 12, 1991 is hereby **AFFIRMED** and the instant petition **DENIED** for lack of merit.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Sixth Division, Mendoza, F., J., Ponente, Campos, Aldecoa, JJ., Concurring.

[2] Original Record, p.136.

[3] *Buazon vs. Court of Appeals*, 220 SCRA 182.

[4] Court of Appeals Decision, CA-G.R. CV No. 16981, p. 21.

[5] G.R. No. 104609, June 30, 1993.

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