

## **FORTUNE INSURANCE AND SURETY CO., INC., PETITIONER, VS. COURT OF APPEALS AND PRODUCERS BANK OF THE PHILIPPINES, RESPONDENTS.**

*G.R. No. 115278. May 23, 1995*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

The fundamental legal issue raised in this petition for review on certiorari is whether the petitioner is liable under the Money, Security, and Payroll Robbery policy it issued to the private respondent or whether recovery thereunder is precluded under the general exceptions clause thereof. Both the trial court and the Court of Appeals held that there should be recovery. The petitioner contends otherwise.

This case began with the filing with the Regional Trial Court (RTC) of Makati, Metro Manila, by private respondent Producers Bank of the Philippines (hereinafter Producers) against petitioner Fortune Insurance and Surety Co., Inc. (hereinafter Fortune) of a complaint for recovery of the sum of P725,000.00 under the policy issued by Fortune. The sum was allegedly lost during a robbery of Producer's armored vehicle while it was in transit to transfer the money from its Pasay City Branch to its head office in Makati. The case was docketed as Civil Case No. 1817 and assigned to Branch 146 thereof.

After joinder of issues, the parties asked the trial court to render judgment based on the following stipulation of facts:

- The plaintiff was insured by the defendants and an insurance policy was issued, the duplicate original of which is hereto attached as Exhibit "A";
- An armored car of the plaintiff, while in the process of transferring cash in the sum of P725,000.00 under the custody of its teller, Maribeth Alampay, from its Pasay Branch to its Head Office at 8737 Paseo de Roxas, Makati, Metro Manila on June 29, 1987, was robbed of the said cash. The robbery took place while the armored car was traveling along Taft Avenue in Pasay City;
- The said armored car was driven by Benjamin Magalong Y de Vera, escorted by Security Guard Saturnino Atiga Y Rosete. Driver Magalong was assigned by PRC Management Systems with the plaintiff by virtue of an Agreement executed on August 7, 1983, a duplicate original copy of which is hereto attached as Exhibit "B";
- The Security Guard Atiga was assigned by Unicorn Security Services, Inc. with the plaintiff by virtue of a contract of Security Service executed on October 25, 1982, a duplicate original copy of which is hereto attached as Exhibit "C";
- After an investigation conducted by the Pasay police authorities, the driver Magalong and guard Atiga were charged, together with Edelmer Bantigue Y Eulalio, Reynaldo Aquino and John Doe, with violation of P.D. 532 (Anti-Highway Robbery Law) before the Fiscal of Pasay City. A copy of the complaint is hereto attached as Exhibit "D";

- The Fiscal of Pasay City then filed an information charging the aforesaid persons with the said crime before Branch 112 of the Regional Trial Court of Pasay City. A copy of the said information is hereto attached as Exhibit "E." The case is still being tried as of this date;

- Demands were made by the plaintiff upon the defendant to pay the amount of the loss of P725,000.00, but the latter refused to pay as the loss is excluded from the coverage of the insurance policy, attached hereto as Exhibit "A," specifically under page 1 thereof, "General Exceptions" Section (b), which is marked as Exhibit "A-1," and which reads as follows:

"GENERAL EXCEPTIONS

The company shall not be liable under this policy in respect of

x x x

(b) any loss caused by any dishonest, fraudulent or criminal act of the insured or any officer, employee, partner, director, trustee or authorized representative of the Insured whether acting alone or in conjunction with others. x x x"

- The plaintiff opposes the contention of the defendant and contends that Atiga and Magalong are not its "officer, employee, x x x trustee or authorized representative x x x at the time of the robbery.[1]

On 26 April 1990, the trial court rendered its decision in favor of Producers. The dispositive portion thereof reads as follows:

WHEREFORE, premises considered, the Court finds for plaintiff and against defendant, and

(a)

orders defendant to pay plaintiff the net amount of P540,000.00 as liability under Policy No. 0207 (as mitigated by the P40,000.00 special clause deduction and by the recovered sum of P145,000.00), with interest thereon at the legal rate, until fully paid;

(b)

orders defendant to pay plaintiff the sum of P30,000.00 as and for attorney's fees; and

(c)

orders defendant to pay costs of suit.

All other claims and counterclaims are accordingly dismissed forthwith.

SO ORDERED.[2]

The trial court ruled that Magalong and Atiga were not employees or representatives of Producers. It said:

The Court is satisfied that plaintiff may not be said to have selected and engaged Magalong and Atiga, their services as armored car driver and as security guard having been merely offered by PRC Management and by Unicorn Security and which latter firms assigned them to plaintiff. The wages and salaries of both Magalong and Atiga are presumably paid by their respective firms, which alone wields the power to dismiss them. Magalong and Atiga are assigned to plaintiff in fulfillment of agreements to provide driving services and property protection as such — in a context which does not impress the Court as translating into plaintiff's power to control the conduct of any assigned driver or security guard, beyond perhaps entitling plaintiff to request a replacement for such driver or guard. The finding is accordingly compelled that neither Magalong nor Atiga were plaintiff's "employees" in avoidance of defendant's liability under the policy, particularly the general

exceptions therein embodied.

Neither is the Court prepared to accept the proposition that driver Magalong and guard Atiga were the "authorized representatives" of plaintiff. They were merely an assigned armored car driver and security guard, respectively, for the June 29, 1987 money transfer from plaintiff's Pasay Branch to its Makati Head Office. Quite plainly — it was teller Maribeth Alampay who had "custody" of the P725,000.00 cash being transferred along a specified money route, and hence plaintiff's then designated "messenger" adverted to in the policy.[3]

Fortune appealed this decision to the Court of Appeals which docketed the case as CA-G.R. CV No. 32946. In its decision[4] promulgated on 3 May 1994, it affirmed in toto the appealed decision.

The Court of Appeals agreed with the conclusion of the trial court that Magalong and Atiga were neither employees nor authorized representatives of Producers and ratiocinated as follows:

A policy or contract of insurance is to be construed liberally in favor of the insured and strictly against the insurance company (New Life Enterprises vs. Court of Appeals, 207 SCRA 669; Sun Insurance Office, Ltd. vs. Court of Appeals, 211 SCRA 554). Contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense (New Life Enterprises Case, supra, p. 676; Sun Insurance Office, Ltd. vs. Court of Appeals, 195 SCRA 193).

The language used by defendant-appellant in the above quoted stipulation is plain, ordinary and simple. No other interpretation is necessary. The word "employee" should be taken to mean in the ordinary sense.

The Labor Code is a special law specifically dealing with/and specifically designed to protect labor and therefore its definition as to employer-employee relationships insofar as the application/enforcement of said Code is concerned must necessarily be inapplicable to an insurance contract which defendant-appellant itself had formulated. Had it intended to apply the Labor Code in defining what the word "employee" refers to, it must/should have so stated expressly in the insurance policy.

Said driver and security guard cannot be considered as employees of plaintiff-appellee bank because it has no power to hire or to dismiss said driver and security guard under the contracts (Exhs. 8 and C) except only to ask for their replacements from the contractors.[5]

On 20 June 1994, Fortune filed this petition for review on certiorari. It alleges that the trial court and the Court of Appeals erred in holding it liable under the insurance policy because the loss falls within the general exceptions clause considering that driver Magalong and security guard Atiga were Producers' authorized representatives or employees in the transfer of the money and payroll from its branch office in Pasay City to its head office in Makati.

According to Fortune, when Producers commissioned a guard and a driver to transfer its funds from one branch to another, they effectively and necessarily became its authorized representatives in the care and custody of the money. Assuming that they could not be considered authorized representatives, they were, nevertheless, employees of Producers. It asserts that the existence of an employer-employee relationship "is determined by law and being such, it cannot be the subject of agreement." Thus, if there was in reality an employer-employee relationship between Producers, on the one hand, and Magalong and Atiga, on the other, the provisions in the contracts of Producers with PRC Management System for Magalong and with Unicorn Security Services for Atiga which state that Producers is not their employer and that it is absolved from any liability as an employer, would not obliterate the relationship.

Fortune points out that an employer-employee relationship depends upon four standards: (1) the manner of

selection and engagement of the putative employee; (2) the mode of payment of wages; (3) the presence or absence of a power to dismiss; and (4) the presence and absence of a power to control the putative employee's conduct. Of the four, the right-of-control test has been held to be the decisive factor.[6] It asserts that the power of control over Magalong and Atiga was vested in and exercised by Producers. Fortune further insists that PRC Management System and Unicorn Security Services are but "labor-only" contractors under Article 106 of the Labor Code which provides:

ART. 106. Contractor or subcontractor. — There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Fortune thus contends that Magalong and Atiga were employees of Producers, following the ruling in *International Timber Corp. vs. NLRC*[7] that a finding that a contractor is a "labor-only" contractor is equivalent to a finding that there is an employer-employee relationship between the owner of the project and the employees of the "labor-only" contractor.

On the other hand, Producers contends that Magalong and Atiga were not its employees since it had nothing to do with their selection and engagement, the payment of their wages, their dismissal, and the control of their conduct. Producers argued that the rule in *International Timber Corp.* is not applicable to all cases but only when it becomes necessary to prevent any violation or circumvention of the Labor Code, a social legislation whose provisions may set aside contracts entered into by parties in order to give protection to the working man.

Producers further asseverates that what should be applied is the rule in *American President Lines vs. Clave*,[8] to wit:

In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.

Since under Producers' contract with PRC Management Systems it is the latter which assigned Magalong as the driver of Producers' armored car and was responsible for his faithful discharge of his duties and responsibilities, and since Producers paid the monthly compensation of P1,400.00 per driver to PRC Management Systems and not to Magalong, it is clear that Magalong was not Producers' employee. As to Atiga, Producers relies on the provision of its contract with Unicorn Security Services which provides that the guards of the latter "are in no sense employees of the CLIENT."

There is merit in this petition.

It should be noted that the insurance policy entered into by the parties is a theft or robbery insurance policy which is a form of casualty insurance. Section 174 of the Insurance Code provides:

SEC. 174. Casualty insurance is insurance covering loss or liability arising from accident or mishap, excluding certain types of loss which by law or custom are considered as falling exclusively within the scope of insurance such as fire or marine. It includes, but is not limited to, employer's liability insurance, public liability insurance, motor vehicle liability insurance, plate glass insurance, burglary and theft insurance, personal accident and health insurance as written by non-life insurance companies, and other substantially similar kinds of insurance. (emphases supplied)

Except with respect to compulsory motor vehicle liability insurance, the Insurance Code contains no other provisions applicable to casualty insurance or to robbery insurance in particular. These contracts are, therefore, governed by the general provisions applicable to all types of insurance. Outside of these, the rights and obligations of the parties must be determined by the terms of their contract, taking into consideration its purpose and always in accordance with the general principles of insurance law.[9]

It has been aptly observed that in burglary, robbery, and theft insurance, "the opportunity to defraud the insurer -- the moral hazard -- is so great that insurers have found it necessary to fill up their policies with countless restrictions, many designed to reduce this hazard. Seldom does the insurer assume the risk of all losses due to the hazards insured against." [10] Persons frequently excluded under such provisions are those in the insured's service and employment.[11] The purpose of the exception is to guard against liability should the theft be committed by one having unrestricted access to the property.[12] In such cases, the terms specifying the excluded classes are to be given their meaning as understood in common speech.[13] The terms "service" and "employment" are generally associated with the idea of selection, control, and compensation.[14]

A contract of insurance is a contract of adhesion, thus any ambiguity therein should be resolved against the insurer,[15] or it should be construed liberally in favor of the insured and strictly against the insurer.[16] Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from non-compliance with its obligation.[17] It goes without saying then that if the terms of the contract are clear and unambiguous, there is no room for construction and such terms cannot be enlarged or diminished by judicial construction.[18]

An insurance contract is a contract of indemnity upon the terms and conditions specified therein.[19] It is settled that the terms of the policy constitute the measure of the insurer's liability.[20] In the absence of statutory prohibition to the contrary, insurance companies have the same rights as individuals to limit their liability and to impose whatever conditions they deem best upon their obligations not inconsistent with public policy.

With the foregoing principles in mind, it may now be asked whether Magalong and Atiga qualify as employees or authorized representatives of Producers under paragraph (b) of the general exceptions clause of the policy which, for easy reference, is again quoted:

GENERAL EXCEPTIONS

The company shall not be liable under this policy in respect of

x x x

(b)

any loss caused by any dishonest, fraudulent or criminal act of the insured or any officer, employee, partner, director, trustee or authorized representative of the Insured whether acting alone or in conjunction with others.

x x x (emphases supplied)

There is marked disagreement between the parties on the correct meaning of the terms "employee" and "authorized representatives."

It is clear to us that insofar as Fortune is concerned, it was its intention to exclude and exempt from protection and coverage losses arising from dishonest, fraudulent, or criminal acts of persons granted or having unrestricted access to Producers' money or payroll. When it used then the term "employee," it must have had in mind any person who qualifies as such as generally and universally understood, or jurisprudentially established in the light of the four standards in the determination of the employer-employee relationship,[21] or as statutorily declared

even in a limited sense as in the case of Article 106 of the Labor Code which considers the employees under a "labor-only" contract as employees of the party employing them and not of the party who supplied them to the employer.[22]

Fortune claims that Producers' contracts with PRC Management Systems and Unicorn Security Services are "labor-only" contracts. Producers; however, insists that by the express terms thereof, it is not the employer of Magalong. Notwithstanding such express assumption of PRC Management Systems and Unicorn Security Services that the drivers and the security guards each shall supply to Producers are not the latter's employees, it may, in fact, be that it is because the contracts are, indeed, "labor-only" contracts. Whether they are is, in the light of the criteria provided for in Article 106 of the Labor Code, a question of fact. Since the parties opted to submit the case for judgment on the basis of their stipulation of facts which are strictly limited to the insurance policy, the contracts with PRC Management Systems and Unicorn Security Services, the complaint for violation of P.D. No. 532, and the information therefor filed by the City Fiscal of Pasay City, there is a paucity of evidence as to whether the contracts between Producers and PRC Management Systems and Unicorn Security Services are "labor-only" contracts.

But even granting for the sake of argument that these contracts were not "labor-only" contracts, and PRC Management Systems and Unicorn Security Services were truly independent contractors, we are satisfied that Magalong and Atiga were, in respect of the transfer of Producer's money from its Pasay City branch to its head office in Makati, its "authorized representatives" who served as such with its teller Maribeth Alampay. Howsoever viewed, Producers entrusted the three with the specific duty to safely transfer the money to its head office, with Alampay to be responsible for its custody in transit; Magalong to drive the armored vehicle which would carry the money; and Atiga to provide the needed security for the money, the vehicle, and his two other companions. In short, for these particular tasks, the three acted as agents of Producers. A "representative" is defined as one who represents or stands in the place of another; one who represents others or another in a special capacity, as an agent, and is interchangeable with "agent." [23]

In view of the foregoing, Fortune is exempt from liability under the general exceptions clause of the insurance policy.

WHEREFORE, the instant petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. CV No. 32946 dated 3 May 1994 as well as that of Branch 146 of the Regional Trial Court of Makati in Civil Case No. 1817 are REVERSED and SET ASIDE. The complaint in Civil Case No. 1817 is DISMISSED.

No pronouncement as to costs.

### **SO ORDERED.**

Bellosillo and Kapunan, JJ., concur.

Padilla, J., (Chairman), No part, in view of a lessor-lessee relationship with Producers Bank.

Quiason, J., on official leave.

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[1] Rollo, 46-47 (emphases supplied).

[2] Id., 8.

[3] Rollo, 10-11.

[4] Annex "A" of Petition; Id., 45-53. Per Austria-Martinez, A., J., with Marigomen, A. and Reyes, R., JJ., concurring.

[5] Rollo, 51-52.

[6] Citing in the Petition, *Broadway Motors, Inc. vs. NLRC*, 156 SCRA 522 [1987], and in the Memorandum, *Vallum Security Services vs. NLRC*, 224 SCRA 781 [1993].

**[7] 169 SCRA 341 [1989].**

**[8] 114 SCRA 832 [1982].**

[9] MARIA CLARA M. CAMPOS, *Insurance*, 1983 ed., 199.

[10] WILLIAM B. VANCE, *Handbook on the Law of Insurance*, 3rd ed., by Buist M. Andersen [1951], 1014.

[11] *Bowling vs. Hamblen County Motor Co.*, 66 S.W. 2d 229, 16 Tenn. App. 52.

[12] *Barret vs. Commercial Standard Ins. Co.*, Tex.Civ.App., 145 S.W. 2d 315.

[13] *Ledvinka vs. Home Ins. Co. of New York*, 115 A. 596, 139 Md. 434, 19 A.L.R. 167.

[14] *Id.*; *Gulf Finance & Securities Co. vs. National Fire Ins. Co.*, 7 La. App. 8.

[15] CAMPOS, *op. cit.*, 22.

[16] *Verendia vs. Court of Appeals*, 217 SCRA 417 [1993].

[17] CAMPOS, *op. cit.*, 13.

[18] 43 Am Jur 2d Insurance § 271 [1982].

[19] *Stokes vs. Malayan Insurance*, 127 SCRA 766 [1984].

[20] *Paramount Insurance Corp. vs. Japzon*, 211 SCRA 879 [1992].

[21] See *Broadway Motors, Inc. vs. NLRC*, *supra* note 6; *Canlubang Security Agency Corp. vs. NLRC*, 216 SCRA 280 [1992]; *Vallum Security Services vs. NLRC*, *supra* note 6; and *Villuga vs. NLRC*, 225 SCRA 537 [1993].

[22] See *International Timber Corp. vs. NLRC*, *supra* note 7; *Baguio vs. NLRC*, 202 SCRA 465 [1965].

[23] *Black's Law Dictionary*, Fifth ed., 1170.

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