

SOUTHEASTERN COLLEGE, INC., PETITIONER, VS. COURT OF APPEALS, JUANITA DE JESUS VDA. DE DIMAANO, EMERITA DIMAANO, REMEDIOS DIMAANO, CONSOLACION DIMAANO AND MILAGROS DIMAANO, RESP...

G.R. No. 126389. July 10, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

Petition for review under Rule 45 of the Rules of Court seeking to set aside the Decision[1] promulgated on July 31, 1996, and Resolution[2] dated September 12, 1996 of the Court of Appeals[3] in CA-G.R. No. 41422, entitled “Juanita de Jesus vda. de Dimaano, et al. vs. Southeastern College, Inc.”, which reduced the moral damages awarded below from P1,000,000.00 to P200,000.00.[4] The Resolution under attack denied petitioner’s motion for reconsideration.

Private respondents are owners of a house at 326 College Road, Pasay City, while petitioner owns a four-storey school building along the same College Road. On October 11, 1989, at about 6:30 in the morning, a powerful typhoon “Saling” hit Metro Manila. Buffeted by very strong winds, the roof of petitioner’s building was partly ripped off and blown away, landing on and destroying portions of the roofing of private respondents’ house. After the typhoon had passed, an ocular inspection of the destroyed buildings was conducted by a team of engineers headed by the city building official, Engr. Jesus L. Reyna. Pertinent aspects of the latter’s Report[5] dated October 18, 1989 stated, as follows:

“5. One of the factors that may have led to this calamitous event is the formation of the buildings in the area and the general direction of the wind. Situated in the peripheral lot is an almost U-shaped formation of 4-storey building. Thus, with the strong winds having a westerly direction, the general formation of the buildings becomes a big funnel-like structure, the one situated along College Road, receiving the heaviest impact of the strong winds. Hence, there are portions of the roofing, those located on both ends of the building, which remained intact after the storm.

6. Another factor and perhaps the most likely reason for the dislodging of the roofings structural trusses is the improper anchorage of the said trusses to the roof beams. The 1/2” diameter steel bars embedded on the concrete roof beams which serve as truss anchorage are not bolted nor nailed to the trusses. Still, there are other steel bars which were not even bent to the trusses, thus, those trusses are not anchored at all to the roof beams.”

It then recommended that “to avoid any further loss and damage to lives, limbs and property of persons living in the vicinity,” the fourth floor of subject school building be declared as a “structural hazard.”

In their Complaint[6] before the Regional Trial Court of Pasay City, Branch 117, for damages based on culpa aquiliana, private respondents alleged that the damage to their house rendered the same uninhabitable, forcing them to stay temporarily in others’ houses. And so they sought to recover from petitioner P117,116.00, as actual

damages, P1,000,000.00, as moral damages, P300,000.00, as exemplary damages and P100,000.00, for and as attorney's fees; plus costs.

In its Answer, petitioner averred that subject school building had withstood several devastating typhoons and other calamities in the past, without its roofing or any portion thereof giving way; that it has not been remiss in its responsibility to see to it that said school building, which houses school children, faculty members, and employees, is "in tip-top condition"; and furthermore, typhoon "Saling" was "an act of God and therefore beyond human control" such that petitioner cannot be answerable for the damages wrought thereby, absent any negligence on its part.

The trial court, giving credence to the ocular inspection report to the effect that subject school building had a "defective roofing structure," found that, while typhoon "Saling" was accompanied by strong winds, the damage to private respondents' house "could have been avoided if the construction of the roof of [petitioner's] building was not faulty." The dispositive portion of the lower court's decision[7] reads thus:

"WHEREFORE, in view of the foregoing, the Court renders judgment (sic) in favor of the plaintiff (sic) and against the defendants, (sic) ordering the latter to pay jointly and severally the former as follows:

a) P117,116.00, as actual damages, plus litigation expenses;

b) P1,000,000.00 as moral damages;

c) P100,000.00 as attorney's fees;

d) Costs of the instant suit.

The claim for exemplary damages is denied for the reason that the defendants (sic) did not act in a wanton fraudulent, reckless, oppressive or malevolent manner."

In its appeal to the Court of Appeals, petitioner assigned as errors,[8] that:

I

THE TRIAL COURT ERRED IN HOLDING THAT TYPHOON "SALING", AS AN ACT OF GOD, IS NOT "THE SOLE AND ABSOLUTE REASON" FOR THE RIPPING-OFF OF THE SMALL PORTION OF THE ROOF OF SOUTHEASTERN'S FOUR (4) STOREY SCHOOL BUILDING.

II

THE TRIAL COURT ERRED IN HOLDING THAT "THE CONSTRUCTION OF THE ROOF OF DEFENDANT'S SCHOOL BUILDING WAS FAULTY" NOTWITHSTANDING THE ADMISSION THAT THERE WERE TYPHOONS BEFORE BUT NOT AS GRAVE AS TYPHOON "SALING" WHICH IS THE DIRECT AND PROXIMATE CAUSE OF THE INCIDENT.

III

THE TRIAL COURT ERRED IN AWARDING ACTUAL AND MORAL DAMAGES AS WELL AS ATTORNEY'S FEES AND LITIGATION EXPENSES AND COSTS OF SUIT TO DIMAANOS WHEN THEY HAVE NOT INCURRED ACTUAL DAMAGES AT ALL AS DIMAANOS HAVE ALREADY SOLD THEIR PROPERTY, AN INTERVENING EVENT THAT RENDERS THIS CASE MOOT AND ACADEMIC.

IV

THE TRIAL COURT ERRED IN ORDERING THE ISSUANCE OF THE WRIT OF EXECUTION INSPITE OF THE PERFECTION OF SOUTHEASTERN'S APPEAL WHEN THERE IS NO COMPELLING

REASON FOR THE ISSUANCE THERETO.

As mentioned earlier, respondent Court of Appeals affirmed with modification the trial court's disposition by reducing the award of moral damages from P1,000,000.00 to P200,000.00. Hence, petitioner's resort to this Court, raising for resolution the issues of:

- “1. Whether or not the award of actual damage [sic] to respondent Dimaanos on the basis of speculation or conjecture, without proof or receipts of actual damage, [sic] legally feasible or justified.
2. Whether or not the award of moral damages to respondent Dimaanos, without the latter having suffered, actual damage has legal basis.
3. Whether or not respondent Dimaanos who are no longer the owner of the property, subject matter of the case, during its pendency, has the right to pursue their complaint against petitioner when the case was already rendered moot and academic by the sale of the property to third party.
4. Whether or not the award of attorney's fees when the case was already moot and academic [sic] legally justified.
5. Whether or not petitioner is liable for damage caused to others by typhoon “Saling” being an act of God.
6. Whether or not the issuance of a writ of execution pending appeal, ex-parte or without hearing, has support in law.”

The pivot of inquiry here, determinative of the other issues, is whether the damage on the roof of the building of private respondents resulting from the impact of the falling portions of the school building's roof ripped off by the strong winds of typhoon “Saling”, was, within legal contemplation, due to fortuitous event? If so, petitioner cannot be held liable for the damages suffered by the private respondents. This conclusion finds support in Article 1174 of the Civil Code, which provides:

“Art 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.”

The antecedent of fortuitous event or *caso fortuito* is found in the *Partidas* which defines it as “an event which takes place by accident and could not have been foreseen.”[9] Escriche elaborates it as “an unexpected event or act of God which could neither be foreseen nor resisted.”[10] Civilist Arturo M. Tolentino adds that “[f]ortuitous events may be produced by two general causes: (1) by nature, such as earthquakes, storms, floods, epidemics, fires, etc. and (2) by the act of man, such as an armed invasion, attack by bandits, governmental prohibitions, robbery, etc.”[11]

In order that a fortuitous event may exempt a person from liability, it is necessary that he be free from any previous negligence or misconduct by reason of which the loss may have been occasioned.[12] An act of God cannot be invoked for the protection of a person who has been guilty of gross negligence in not trying to forestall its possible adverse consequences. When a person's negligence concurs with an act of God in producing damage or injury to another, such person is not exempt from liability by showing that the immediate or proximate cause of the damage or injury was a fortuitous event. When the effect is found to be partly the result of the participation of man – whether it be from active intervention, or neglect, or failure to act – the whole occurrence is hereby humanized, and removed from the rules applicable to acts of God.[13]

In the case under consideration, the lower court accorded full credence to the finding of the investigating team that subject school building's roofing had “no sufficient anchorage to hold it in position especially when battered

by strong winds.” Based on such finding, the trial court imputed negligence to petitioner and adjudged it liable for damages to private respondents.

After a thorough study and evaluation of the evidence on record, this Court believes otherwise, notwithstanding the general rule that factual findings by the trial court, especially when affirmed by the appellate court, are binding and conclusive upon this Court.[14] After a careful scrutiny of the records and the pleadings submitted by the parties, we find exception to this rule and hold that the lower courts misappreciated the evidence proffered.

There is no question that a typhoon or storm is a fortuitous event, a natural occurrence which may be foreseen but is unavoidable despite any amount of foresight, diligence or care.[15] In order to be exempt from liability arising from any adverse consequence engendered thereby, there should have been no human participation amounting to a negligent act.[16] In other words, the person seeking exoneration from liability must not be guilty of negligence. Negligence, as commonly understood, is conduct which naturally or reasonably creates undue risk or harm to others. It may be the failure to observe that degree of care, precaution, and vigilance which the circumstances justly demand,[17] or the omission to do something which a prudent and reasonable man, guided by considerations which ordinarily regulate the conduct of human affairs, would do.[18] From these premises, we proceed to determine whether petitioner was negligent, such that if it were not, the damage caused to private respondents’ house could have been avoided?

At the outset, it bears emphasizing that a person claiming damages for the negligence of another has the burden of proving the existence of fault or negligence causative of his injury or loss. The facts constitutive of negligence must be affirmatively established by competent evidence,[19] not merely by presumptions and conclusions without basis in fact. Private respondents, in establishing the culpability of petitioner, merely relied on the aforementioned report submitted by a team which made an ocular inspection of petitioner’s school building after the typhoon. As the term imparts, an ocular inspection is one by means of actual sight or viewing.[20] What is visual to the eye though, is not always reflective of the real cause behind. For instance, one who hears a gunshot and then sees a wounded person, cannot always definitely conclude that a third person shot the victim. It could have been self-inflicted or caused accidentally by a stray bullet. The relationship of cause and effect must be clearly shown.

In the present case, other than the said ocular inspection, no investigation was conducted to determine the real cause of the partial unroofing of petitioner’s school building. Private respondents did not even show that the plans, specifications and design of said school building were deficient and defective. Neither did they prove any substantial deviation from the approved plans and specifications. Nor did they conclusively establish that the construction of such building was basically flawed.[21]

On the other hand, petitioner elicited from one of the witnesses of private respondents, city building official Jesus Reyna, that the original plans and design of petitioner’s school building were approved prior to its construction. Engr. Reyna admitted that it was a legal requirement before the construction of any building to obtain a permit from the city building official (city engineer, prior to the passage of the Building Act of 1977). In like manner, after construction of the building, a certification must be secured from the same official attesting to the readiness for occupancy of the edifice. Having obtained both building permit and certificate of occupancy, these are, at the very least, *prima facie* evidence of the regular and proper construction of subject school building.[22]

Furthermore, when part of its roof needed repairs of the damage inflicted by typhoon “Saling”, the same city official gave the go-signal for such repairs – without any deviation from the original design – and subsequently, authorized the use of the entire fourth floor of the same building. These only prove that subject building suffers from no structural defect, contrary to the report that its “U-shaped” form was “structurally defective.” Having

given his unqualified imprimatur, the city building official is presumed to have properly performed his duties[23] in connection therewith.

In addition, petitioner presented its vice president for finance and administration who testified that an annual maintenance inspection and repair of subject school building were regularly undertaken. Petitioner was even willing to present its maintenance supervisor to attest to the extent of such regular inspection but private respondents agreed to dispense with his testimony and simply stipulated that it would be corroborative of the vice president's narration.

Moreover, the city building official, who has been in the city government service since 1974, admitted in open court that no complaint regarding any defect on the same structure has ever been lodged before his office prior to the institution of the case at bench. It is a matter of judicial notice that typhoons are common occurrences in this country. If subject school building's roofing was not firmly anchored to its trusses, obviously, it could not have withstood long years and several typhoons even stronger than "Saling."

In light of the foregoing, we find no clear and convincing evidence to sustain the judgment of the appellate court. We thus hold that petitioner has not been shown negligent or at fault regarding the construction and maintenance of its school building in question and that typhoon "Saling" was the proximate cause of the damage suffered by private respondents' house.

With this disposition on the pivotal issue, private respondents' claim for actual and moral damages as well as attorney's fees must fail.[24] Petitioner cannot be made to answer for a purely fortuitous event.[25] More so because no bad faith or willful act to cause damage was alleged and proven to warrant moral damages.

Private respondents failed to adduce adequate and competent proof of the pecuniary loss they actually incurred.[26] It is not enough that the damage be capable of proof but must be actually proved with a reasonable degree of certainty, pointing out specific facts that afford a basis for measuring whatever compensatory damages are borne.[27] Private respondents merely submitted an estimated amount needed for the repair of the roof of their subject building. What is more, whether the "necessary repairs" were caused ONLY by petitioner's alleged negligence in the maintenance of its school building, or included the ordinary wear and tear of the house itself, is an essential question that remains indeterminable.

The Court deems unnecessary to resolve the other issues posed by petitioner.

As regards the sixth issue, however, the writ of execution issued on April 1, 1993 by the trial court is hereby nullified and set aside. Private respondents are ordered to reimburse any amount or return to petitioner any property which they may have received by virtue of the enforcement of said writ.

WHEREFORE, the petition is GRANTED and the challenged Decision is REVERSED. The complaint of private respondents in Civil Case No. 7314 before the trial court a quo is ordered DISMISSED and the writ of execution issued on April 1, 1993 in said case is SET ASIDE. Accordingly, private respondents are ORDERED to return to petitioner any amount or property received by them by virtue of said writ. Costs against the private respondents. SO ORDERED.

Narvasa, C.J., (Chairman), Romero, and Kapunan, JJ., concur.

[1] Rollo, pp. 28-41.

[2] Ibid., p. 42.

- [3] Seventh Division, composed of J. Jose de la Rama, ponente; with JJ. Emeterio C. Cui (chairman) and Eduardo G. Montenegro, concurring.
- [4] CA Decision, p. 13; Rollo, p. 40.
- [5] Records, pp. 127-128.
- [6] Ibid., pp. 1-3.
- [7] CA Rollo, pp. 63-69.
- [8] Rollo, pp. 20-21.
- [9] Tolentino, Civil Code of the Philippines, 1991 ed., Col IV, p. 126.
- [10] Ibid.
- [11] Ibid.
- [12] Ibid., p. 130, citing *Tan Chiong vs. Inchausti*, 22 Phil 152, 1912. *Nakpil & Sons vs. Court of Appeals*, 144 SCRA 596, 607, October 3, 1986. See also *Metal Forming Corporation vs. Office of the President*, 247 SCRA 731, 738-739, August 28, 1995.
- [13] *Nakpil & Sons, vs. Court of Appeals*, Ibid., pp. 606-607. See also *Ilocos Norte Electric Co. vs. Court of Appeals*, 179 SCRA 5, 15, November 6, 1989.
- [14] *Fuentes vs. Court of Appeals*, 268 SCRA 703, February 26, 1997; *Atlantic Gulf & Pacific Company of Manila, Inc. vs. Court of Appeals*, 247 SCRA 606, August 23, 1995; *Acebedo Optical Co., Inc. vs. Court of Appeals*, 250 SCRA 409, November 29, 1995.
- [15] *Nakpil & sons, vs. Court of Appeals*, supra, p. 606, citing 1 CJS 1174.
- [16] *Batangas Laguna Tayabas Bus Co. vs. Intermediate Appellate Court*, 167 SCRA 379, 386, November 14, 1988.
- [17] *Valenzuela vs. Court of Appeals*, 253 SCRA 303, February 7, 1996. cf. *Quibal vs. Sandiganbayan*, 244 SCRA 224, May 22, 1995; *Citibank, NA vs. Gatchalian*, 240 SCRA 212, January 18, 1995.
- [18] *Layugan vs. Intermediate Appellate Court*, 167 SCRA 363, 372-273, November 14, 1988; *Philippine Bank of Commerce vs. court of Appeals*, GR No. 97626, March 14, 1997.
- [19] *Philippine Long Distance Telephone Co., Inc. vs. Court of Appeals*, 178 SCRA 94, 106, September 29, 1989, citing *Barcelo vs. Manila Electric Railroad & Light Co.*, 29 Phil 351, January 28, 1915.
- [20] Webster's Third New International Dictionary, 1971 ed.; Moreno, *Philippine Law Dictionary*, 2nd ed.
- [21] CF. *Nakpil & Sons vs. court of Appeals*, supra. See also *Quisumbing Sr. vs. Court of Appeals*, 189 SCRA 605, September 14, 1990.
- [22] cf. *Yap Kim Chuan vs. Tiaoqui*, 31 Phil 433, September 18, 1915.
- [23] *Tatad vs. Garcia Jr.*, 243 SCRA 436, April 6, 1995; *People vs. Figueroa*, 248 SCRA 679, October 2, 1995.
- [24] *Toyota Shaw, Inc. vs. Court of Appeals*, 244 SCRA 320, May 23, 1995; *Custodio vs. Court of Appeals*, 253 SCRA 483, February 9, 1996; *Syquia vs. Court of Appeals*, 217 SCRA 624, January 27, 1993.
- [25] *Itan Chiong vs. Inchausti*, supra.

[26] Baliwag Transit, Inc. vs. Court of Appeals, 256 SCRA 746, May 15, 1996.

[27] Del Mundo vs. Court of Appeals, 240 SCRA 348, January 20, 1995.

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