

DBP POOL OF ACCREDITED INSURANCE COMPANIES, PETITIONER, VS. RADIO MINDANAO NETWORK, INC., RESPONDENT.

G.R. NO. 147039. January 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This refers to the petition for certiorari under Rule 45 of the Rules of Court seeking the review of the Decision[1] dated November 16, 2000 of the Court of Appeals (CA) in CA-G.R. CV No. 56351, the dispositive portion of which reads:

Wherefore, premises considered, the appealed Decision of the Regional Trial Court of Makati City, Branch 138 in Civil Case No. 90-602 is hereby AFFIRMED with MODIFICATION in that the interest rate is hereby reduced to 6% per annum.

Costs against the defendants-appellants.

SO ORDERED.[2]

The assailed decision originated from Civil Case No. 90-602 filed by Radio Mindanao Network, Inc. (respondent) against DBP Pool of Accredited Insurance Companies (petitioner) and Provident Insurance Corporation (Provident) for recovery of insurance benefits. Respondent owns several broadcasting stations all over the country. Provident covered respondent's transmitter equipment and generating set for the amount of P13,550,000.00 under Fire Insurance Policy No. 30354, while petitioner covered respondent's transmitter, furniture, fixture and other transmitter facilities for the amount of P5,883,650.00 under Fire Insurance Policy No. F-66860.

In the evening of July 27, 1988, respondent's radio station located in SSS Building, Bacolod City, was razed by fire causing damage in the amount of P1,044,040.00. Respondent sought recovery under the two insurance policies but the claims were denied on the ground that the cause of loss was an excepted risk excluded under condition no. 6 (c) and (d), to wit:

6. This insurance does not cover any loss or damage occasioned by or through or in consequence, directly or indirectly, of any of the following consequences, namely:

(c) War, invasion, act of foreign enemy, hostilities, or warlike operations (whether war be declared or not), civil war.

(d) Mutiny, riot, military or popular rising, insurrection, rebellion, revolution, military or usurped power.[3]

The insurance companies maintained that the evidence showed that the fire was caused by members of the Communist Party of the Philippines/New People's Army (CPP/NPA); and consequently, denied the claims. Hence, respondent was constrained to file Civil Case No. 90-602 against petitioner and Provident.

After trial on the merits, the Regional Trial Court of Makati, Branch 138, rendered a decision in favor of

respondent. The dispositive portion of the decision reads:

IN VIEW THEREOF, judgment is rendered in favor of plaintiff. Defendant Provident Insurance Corporation is directed to pay plaintiff the amount of P450,000.00 representing the value of the destroyed property insured under its Fire Insurance Policy plus 12% legal interest from March 2, 1990 the date of the filing of the Complaint. Defendant DBP Pool Accredited Insurance Companies is likewise ordered to pay plaintiff the sum of P602,600.00 representing the value of the destroyed property under its Fire Insurance Policy plus 12% legal interest from March 2, 1990.

SO ORDERED.[4]

Both insurance companies appealed from the trial court's decision but the CA affirmed the decision, with the modification that the applicable interest rate was reduced to 6% per annum. A motion for reconsideration was filed by petitioner DBP which was denied by the CA per its Resolution dated January 30, 2001.[5]

Hence, herein petition by DBP Pool of Accredited Insurance Companies,[6] with the following assignment of errors:

Assignment of Errors

THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT THERE WERE NO SUFFICIENT EVIDENCE SHOWING THAT THE APPROXIMATELY TENTY [sic] (20) ARMED MEN WHO CUSED [sic] THE FIRE AT RESPONDENT'S RMN PROPERTY AT BACOLOD CITY WERE MEMBERS OF THE CPP-NPA.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT ADJUDGED THAT RESPONDENT RMN CANNOT BEHELD [sic] FOR DAMAGES AND ATTORNEY'S FEES FOR INSTITUTING THE PRESENT ACTION AGAINST THE PETITIONER UNDER ARTICLES 21, 2208, 2229 AND 2232 OF THE CIVIL CODE OF THE PHILIPPINES.[7]

Petitioner assails the factual finding of both the trial court and the CA that its evidence failed to support its allegation that the loss was caused by an excepted risk, i.e., members of the CPP/NPA caused the fire. In upholding respondent's claim for indemnity, the trial court found that:

The only evidence which the Court can consider to determine if the fire was due to the intentional act committed by the members of the New People's Army (NPA), are the testimony [sic] of witnesses Lt. Col. Nicolas Torres and SPO3 Leonardo Rochar who were admittedly not present when the fire occurred. Their testimony [sic] was [sic] limited to the fact that an investigation was conducted and in the course of the investigation they were informed by bystanders that "heavily armed men entered the transmitter house, poured gasoline in (sic) it and then lighted it. After that, they went out shouting "Mabuhay ang NPA" (TSN, p. 12., August 2, 1995). The persons whom they investigated and actually saw the burning of the station were not presented as witnesses. The documentary evidence particularly Exhibits "5" and "5-C" do not satisfactorily prove that the author of the burning were members of the NPA. Exhibit "5-B" which is a letter released by the NPA merely mentions some dissatisfaction with the activities of some people in the media in Bacolod. There was no mention there of any threat on media facilities.[8]

The CA went over the evidence on record and sustained the findings of the trial court, to wit:

To recapitulate, defendants-appellants presented the following to support its claim, to wit: police blotter of the burning of DYHB, certification of the Negros Occidental Integrated National Police, Bacolod City regarding the incident, letter of alleged NPA members Celso Magsilang claiming responsibility for the burning of DYHB, fire investigation report dated July 29, 1988, and the testimonies of Lt. Col. Nicolas Torres and SFO III Leonardo Rochas. We examined carefully the report on the police blotter of the burning of DYHB, the certification issued by the Integrated National Police of Bacolod City and the fire investigation report prepared

by SFO III Rochas and there We found that none of them categorically stated that the twenty (20) armed men which burned DYHB were members of the CPP/NPA. The said documents simply stated that the said armed men were "believed" to be or "suspected" of being members of the said group. Even SFO III Rochas admitted that he was not sure that the said armed men were members of the CPP-NPA, thus:

...

In fact the only person who seems to be so sure that that the CPP-NPA had a hand in the burning of DYHB was Lt. Col. Nicolas Torres. However, though We found him to be persuasive in his testimony regarding how he came to arrive at his opinion, We cannot nevertheless admit his testimony as conclusive proof that the CPP-NPA was really involved in the incident considering that he admitted that he did not personally see the armed men even as he tried to pursue them. Note that when Lt. Col. Torres was presented as witness, he was presented as an ordinary witness only and not an expert witness. Hence, his opinion on the identity or membership of the armed men with the CPP-NPA is not admissible in evidence.

Anent the letter of a certain Celso Magsilang, who claims to be a member of NPA-NIROC, being an admission of person which is not a party to the present action, is likewise inadmissible in evidence under Section 22, Rule 130 of the Rules of Court. The reason being that an admission is competent only when the declarant, or someone identified in legal interest with him, is a party to the action.[9]

The Court will not disturb these factual findings absent compelling or exceptional reasons. It should be stressed that a review by certiorari under Rule 45 is a matter of discretion. Under this mode of review, the jurisdiction of the Court is limited to reviewing only errors of law, not of fact.[10]

Moreover, when supported by substantial evidence, findings of fact of the trial court as affirmed by the CA are conclusive and binding on the parties,[11] which this Court will not review unless there are exceptional circumstances. There are no exceptional circumstances in this case that would have impelled the Court to depart from the factual findings of both the trial court and the CA.

Both the trial court and the CA were correct in ruling that petitioner failed to prove that the loss was caused by an excepted risk.

Petitioner argues that private respondent is responsible for proving that the cause of the damage/loss is covered by the insurance policy, as stipulated in the insurance policy, to wit:

...

Any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise) which are occasioned by or through in consequence directly or indirectly, of any of the said occurrences shall be deemed to be loss or damage which is not covered by the insurance, except to the extent that the Insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions.

In any action, suit or other proceeding where the Companies allege that by reason of the provisions of this condition any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the Insured.[12]

An insurance contract, being a contract of adhesion, should be so interpreted as to carry out the purpose for which the parties entered into the contract which is to insure against risks of loss or damage to the goods. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations.[13]

The "burden of proof" contemplated by the aforesaid provision actually refers to the "burden of evidence" (burden of going forward).[14] As applied in this case, it refers to the duty of the insured to show that the loss or damage

is covered by the policy. The foregoing clause notwithstanding, the burden of proof still rests upon petitioner to prove that the damage or loss was caused by an excepted risk in order to escape any liability under the contract.

Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. For the plaintiff, the burden of proof never parts.[15] For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense – i.e. an "avoidance" of the claim.[16]

Particularly, in insurance cases, where a risk is excepted by the terms of a policy which insures against other perils or hazards, loss from such a risk constitutes a defense which the insurer may urge, since it has not assumed that risk, and from this it follows that an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the loss comes within the purview of the exception or limitation set up. If a proof is made of a loss apparently within a contract of insurance, the burden is upon the insurer to prove that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability.[17]

Consequently, it is sufficient for private respondent to prove the fact of damage or loss. Once respondent makes out a prima facie case in its favor, the duty or the burden of evidence shifts to petitioner to controvert respondent's prima facie case.[18] In this case, since petitioner alleged an excepted risk, then the burden of evidence shifted to petitioner to prove such exception. It is only when petitioner has sufficiently proven that the damage or loss was caused by an excepted risk does the burden of evidence shift back to respondent who is then under a duty of producing evidence to show why such excepted risk does not release petitioner from any liability. Unfortunately for petitioner, it failed to discharge its primordial burden of proving that the damage or loss was caused by an excepted risk.

Petitioner however, insists that the evidence on record established the identity of the author of the damage. It argues that the trial court and the CA erred in not appreciating the reports of witnesses Lt. Col Torres and SFO II Rochar that the bystanders they interviewed claimed that the perpetrators were members of the CPP/NPA as an exception to the hearsay rule as part of *res gestae*.

A witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his perception.[19] A witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. The hearsay rule is based upon serious concerns about the trustworthiness and reliability of hearsay evidence inasmuch as such evidence are not given under oath or solemn affirmation and, more importantly, have not been subjected to cross-examination by opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability on which the worth of the out-of-court statement depends.[20]

Res gestae, as an exception to the hearsay rule, refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. The rule in *res gestae* applies when the declarant himself did not testify and provided that the testimony of the witness who heard the declarant complies with the following requisites: (1) that the principal act, the *res gestae*, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate

attending circumstances.[21]

The Court is not convinced to accept the declarations as part of *res gestae*. While it may concede that these statements were made by the bystanders during a startling occurrence, it cannot be said however, that these utterances were made spontaneously by the bystanders and before they had the time to contrive or devise a falsehood. Both SFO III Rochar and Lt. Col. Torres received the bystanders' statements while they were making their investigations during and after the fire. It is reasonable to assume that when these statements were noted down, the bystanders already had enough time and opportunity to mill around, talk to one another and exchange information, not to mention theories and speculations, as is the usual experience in disquieting situations where hysteria is likely to take place. It cannot therefore be ascertained whether these utterances were the products of truth. That the utterances may be mere idle talk is not remote.

At best, the testimonies of SFO III Rochar and Lt. Col. Torres that these statements were made may be considered as independently relevant statements gathered in the course of their investigation, and are admissible not as to the veracity thereof but to the fact that they had been thus uttered.[22]

Furthermore, admissibility of evidence should not be equated with its weight and sufficiency.[23] Admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[24] Even assuming that the declaration of the bystanders that it was the members of the CPP/NPA who caused the fire may be admitted as evidence, it does not follow that such declarations are sufficient proof. These declarations should be calibrated vis-à-vis the other evidence on record. And the trial court aptly noted that there is a need for additional convincing proof, viz.:

The Court finds the foregoing to be insufficient to establish that the cause of the fire was the intentional burning of the radio facilities by the rebels or an act of insurrection, rebellion or usurped power. Evidence that persons who burned the radio facilities shouted "Mabuhay ang NPA" does not furnish logical conclusion that they are member [sic] of the NPA or that their act was an act of rebellion or insurrection. Additional convincing proof need be submitted. Defendants failed to discharge their responsibility to present adequate proof that the loss was due to a risk excluded.[25]

While the documentary evidence presented by petitioner, i.e., (1) the police blotter; (2) the certification from the Bacolod Police Station; and (3) the Fire Investigation Report may be considered exceptions to the hearsay rule, being entries in official records, nevertheless, as noted by the CA, none of these documents categorically stated that the perpetrators were members of the CPP/NPA.[26] Rather, it was stated in the police blotter that: "a group of persons accompanied by one (1) woman all believed to be CPP/NPA "more or less 20 persons suspected to be CPP/NPA,"[27] while the certification from the Bacolod Police station stated that "... some 20 or more armed men believed to be members of the New People's Army NPA,"[28] and the fire investigation report concluded that "(I)t is therefore believed by this Investigating Team that the cause of the fire is intentional, and the armed men suspected to be members of the CPP/NPA where (sic) the ones responsible ..."[29] All these documents show that indeed, the "suspected" executor of the fire were believed to be members of the CPP/NPA. But suspicion alone is not sufficient, preponderance of evidence being the quantum of proof.

All told, the Court finds no reason to grant the present petition.

WHEREFORE, the petition is DISMISSED. The Court of Appeals Decision dated November 16, 2000 and Resolution dated January 30, 2001 rendered in CA-G.R. CV No. 56351 are AFFIRMED in toto.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago, and Chico-Nazario, JJ., concur.
Callejo, Sr., J., no part.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Romeo J. Callejo, Sr. (now a Member of this Court) and Juan Q. Enriquez, concurring.

[2] CA rollo, p. 214.

[3] Records, p. 135.

[4] Id., pp. 758-759.

[5] CA rollo, p. 231.

[6] Provident did not file a motion for reconsideration with the CA or a petition for review on certiorari with this Court.

[7] Rollo, p. 12.

[8] Records, p. 758.

[9] CA rollo, pp. 213-214.

[10] Salvador vs. Court of Appeals, G.R. No. 124899, March 30, 2004, 426 SCRA 433, 443.

[11] Agas vs. Sabico, G.R. No. 156447, April 26, 2005, 457 SCRA 263, 273.

[12] Records, p. 135.

[13] Malayan Insurance Corporation vs. Court of Appeals, 336 Phil. 977, 989 (1997).

[14] Tañada vs. Angara, 338 Phil. 546, 597 (1997).

[15] Jison vs. Court of Appeals, 350 Phil. 138, 173 (1998).

[16] Supreme Transliner Inc. vs. Court of Appeals, 421 Phil. 692, 698 (2001).

[17] Country Bankers Insurance Corp. vs. Lianga Bay and Community Multi-Purpose Cooperative, Inc., 425 Phil. 511, 519 (2002).

[18] Jison vs. Court of Appeals, *supra*.

[19] Rules of Court, Rule 130, Section 36.

[20] Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Cooperative, *supra*.

[21] People vs. Mansueto, 391 Phil. 611, 630 (2000).

[22] Peole vs. Velasquez, G.R. Nos. 132635 & 143872–75, February 21, 2001, 352 SCRA 455, 476.

[23] People vs. Manhuyod, Jr., 352 Phil. 866, 885 (1998).

[24] People vs. Navarro, 357 Phil. 1010, 1031 (1998).

[25] Records, p. 758.

[26] CA rollo, p. 213.

[27] Records, p. 451.

[28] Id., p. 452.

[29] Id., p. 461.

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