

COLLEGE ASSURANCE PLAN AND COMPREHENSIVE ANNUITY PLAN AND PENSION CORPORATION, PETITIONERS, VS. BELFRANLT DEVELOPMENT INC., RESPONDENT.

G.R. No. 155604. November 22, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63283, which modified the April 14, 1999 Decision[2] of the Regional Trial Court (Branch 221), Quezon City (RTC) in Civil Case No. Q-95-23118.

The antecedent facts are as summarized by the RTC.

Belfrant Development, Inc. (respondent) is the owner of Belfrant Building in Angeles City, Pampanga. It leased to petitioners College Assurance Plan Phil., Inc. (CAP) and Comprehensive Annuity Plans and Pension Corporation (CAPP) several units on the second and third floors of the building.[3]

On October 8, 1994, fire destroyed portions of the building, including the third floor units being occupied by petitioners. An October 20, 1994 field investigation report by an unnamed arson investigator assigned to the case disclosed:

0.5 Origin of Fire: Store room occupied by CAP, located at the 3rd floor of the bldg.

0.6 Cause of Fire: Accidental (overheated coffee percolator).[4]

These findings are reiterated in the October 21, 1994 certification which the BFP City Fire Marshal, Insp. Teodoro D. del Rosario issued to petitioners as supporting document for the latter's insurance claim.[5]

Citing the foregoing findings, respondent sent petitioners on November 3, 1994 a notice to vacate the leased premises to make way for repairs, and to pay reparation estimated at P1.5 million.

On November 11, 1994, petitioners vacated the leased premises, including the units on the second floor,[6] but they did not act on the demand for reparation.

Respondent wrote petitioners another letter, reiterating its claim for reparation, this time estimated by professionals to be no less than P2 million.[7] It also clarified that, as the leased units on the second floor were not affected by the fire, petitioners had no reason to vacate the same; hence, their lease on said units is deemed still subsisting, along with their obligation to pay for the rent.[8]

In reply, petitioners explained that they could no longer re-occupy the units on the second floor of the building for they had already moved to a new location and entered into a binding contract with a new lessor. Petitioners also disclaimed liability for reparation, pointing out that the fire was a fortuitous event for which they could not be

held responsible.[9]

After its third demand[10] went unheeded, respondent filed with the RTC a complaint against petitioners for damages. The RTC rendered a Decision dated April 14, 1999, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [respondent] and against the herein defendants [petitioners]. Defendants are ordered to pay the plaintiff joint[sic] and severally the following amounts:

1)

P2.2 Million Pesos cost of rehabilitation (repairs, replacements and renovations) of the Belfranlt building by way of Actual and Compensatory damages;

2)

P14,000.00 per month of unpaid rentals on the third floor of the Belfranlt building for the period from October 1994 until the end of the two year lease contract on May 10, 1996 by way of Actual and Compensatory damages;

3)

P18,000.00 per month of unpaid rentals on the second floor of the Belfanlt building for the period from October 1994 until the end of the two year lease contract on May 10, 1996 by way of Actual or Compensatory damages;

4)

P8,400.00 per month as reimbursement of unpaid rentals on the other leased areas occupied by other tenants for the period from October 1994 until the time the vacated leased areas were occupied by new tenants;

5) P200,000.00 as moral damages;

6) P200,000.00 as exemplary damages;

7) P50,000.00 plus 20% of Actual damages awarded as reasonable Attorney's fees; and

8) Costs of suit.

SO ORDERED.[11]

Petitioners appealed to the CA which, in its February 28, 2002 Decision, modified the RTC Decision, thus:

WHEREFORE, the appealed decision is MODIFIED in that the award of (i) actual and compensatory damages in the amounts of P2.2 Million as cost of rehabilitation of Belfranlt Building and P8,400.00 per month as reimbursement of unpaid rentals on the areas leased by other tenants, (ii) moral damages, (iii) exemplary damages and (iv) attorney's fees is DELETED, while defendants-appellants are ordered to pay to plaintiff-appellee, jointly and severally, the amount of P500,000.00 as temperate damages. The appealed judgment is AFFIRMED in all other respects.

SO ORDERED.[12]

Respondent did not appeal from the CA decision.[13]

Petitioners filed the present petition, questioning the CA decision on the following grounds:

I

The honorable Court of Appeals erred in not holding that the fire that partially burned respondent's building was a fortuitous event.

II

The honorable Court of Appeals erred in holding that petitioner failed to observe the due diligence of a good father of a family.

III

The honorable Court of Appeals erred in holding petitioners liable for certain actual damages despite plaintiffs' failure to prove the damage as alleged.

IV

The honorable Court of Appeals erred in holding petitioners liable for temperate damages.[14]

The petition lacks merit.

Article 1667 of the Civil Code, which provides:

The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity.

creates the presumption that the lessee is liable for the deterioration or loss of a thing leased. To overcome such legal presumption, the lessee must prove that the deterioration or loss was due to a fortuitous event which took place without his fault or negligence.[15]

Article 1174 of the Civil Code defines a fortuitous event as that which could not be foreseen, or which, though foreseen, was inevitable. Whether an act of god[16] or an act of man,[17] to constitute a fortuitous event, it must be shown that: a) the cause of the unforeseen and unexpected occurrence or of the failure of the obligor to comply with its obligations was independent of human will; b) it was impossible to foresee the event or, if it could have been foreseen, to avoid it; c) the occurrence rendered it impossible for the obligor to fulfill its obligations in a normal manner; and d) said obligor was free from any participation in the aggravation of the injury or loss.[18] If the negligence or fault of the obligor coincided with the occurrence of the fortuitous event, and caused the loss or damage or the aggravation thereof, the fortuitous event cannot shield the obligor from liability for his negligence.[19]

In the present case, it was fire that caused the damage to the units being occupied by petitioners. The legal presumption therefore is that petitioners were responsible for the damage. Petitioners insist, however, that they are exempt from liability for the fire was a fortuitous event that took place without their fault or negligence.[20]

The RTC saw differently, holding that the proximate cause of the fire was the fault and negligence of petitioners in using a coffee percolator in the office stockroom on the third floor of the building and in allowing the electrical device to overheat:

Plaintiff has presented credible and preponderant evidence that the fire was not due to a fortuitous event but rather was due to an overheated coffee percolator found in the leased premises occupied by the defendants. The certification issued by the Bureau of Fire Protection Region 3 dated October 21, 1994 clearly indicated that the cause of the fire was an overheated coffee percolator. This documentary evidence is credible because it was issued by a government office which conducted an investigation of the cause and circumstances surrounding the fire of October 8, 1994. Under Section 4, Rule 131 of the Revised Rules of Court, there is a legal presumption that official duty has been regularly performed. The defendants have failed to present

countervailing evidence to rebut or dispute this presumption. The defendants did not present any credible evidence to impute any wrongdoing or false motives on the part of Fire Department Officials and Arson investigators in the preparation and finalization of this certification. This Court is convinced that the Certification is genuine, authentic, valid and issued in the proper exercise and regular performance of the issuing authority's official duties. The written certification cannot be considered self-serving to the plaintiff because as clearly indicated on its face the same was issued not to the plaintiff but to the defendant's representative Mr. Jesus V. Roig for purposes of filing their insurance claim. This certification was issued by a government office upon the request of the defendant's authorized representative. The plaintiff also presented preponderant evidence that the fire was caused by an overheated coffee percolator when plaintiff submitted in evidence not only photographs of the remnants of a coffee percolator found in the burned premises but the object evidence itself. Defendants did not dispute the authenticity or veracity of these evidence. Defendants merely presented negative evidence in the form of denials that defendants maintained a coffee percolator in the premises testified to by employees of defendants who cannot be considered totally disinterested.[21] (Citations omitted)

The CA concurred with the RTC and noted additional evidence of the negligence of petitioners:

The records disclose that the metal base of a heating device which the lower court found to be the base of a coffee percolator, was retrieved from the stockroom where the fire originated. The metal base contains the inscription "CAUTION DO NOT OPERATE WHEN EMPTY", which is a warning against the use of such electrical device when empty and an indication that it is a water-heating appliance. Its being an instrument for preparing coffee is demonstrated by its retrieval from the stockroom, particularly beside broken drinking glasses, Nescafe bottle, metal dish rack and utensils.

Appellants assert that it had an airpot – not a coffee percolator - near the Administration Office on the third floor. For unexplained reasons, however, they did not present the airpot to disprove the existence of the coffee percolator. The fire did not raze the entire third floor and the objects therein. Even the stack of highly combustible paper on the third floor was not totally gutted by the fire. Consequently, it is not farfetched that the burnt airpot, if any, could have been recovered by appellants from the area where it was supposedly being kept.

x x x x

The defense that the fire was a fortuitous event is untenable. It is undisputed that the fire originated from appellants' stockroom located on the third floor leased premises. Said stockroom was under the control of appellants which, on that fateful day (a Saturday), conducted a seminar in the training room which was adjoining the stockroom. Absent an explanation from appellants on the cause of the fire, the doctrine of *res ipsa loquitur* applies.[22]

Petitioners impugn both findings. They claim that the BFP field investigation report (Exh. "P-2") and the BFP certification (Exh. "P-3") are hearsay evidence because these were presented during the testimony of Fireman Gerardo Sitchon (Fireman Sitchon) of the Bureau of Fire Protection (BFP), Angeles City, who admitted to having no participation in the investigation of the fire incident or personal knowledge about said incident,[23] making him incompetent to testify thereon. Petitioners argue that, with Exh. "P-2" and Exh. "P-3" and the testimony of Fireman Sitchon that are flawed, there is virtually no evidence left that the cause of the fire was an overheated coffee percolator. Petitioners insist that they own no such percolator.[24]

We find no cogent reason to disturb the finding of the RTC and CA.

The finding that the negligence of petitioners was the proximate cause of the fire that destroyed portions of the leased units is a purely factual matter which we cannot pass upon,[25] lest we overstep the restriction that review by certiorari under Rule 45 be limited to errors of law only.[26]

Moreover, the established rule is that the factual findings of the CA affirming those of the RTC are conclusive and binding on us.[27] We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[28]

The exceptions do not obtain in the present case. In fact, the findings of the RTC and CA are fully supported by the evidence.

Contrary to petitioners' claim, Fireman Sitchon is competent to identify and testify on Exh. "P-2" and Exh. "P-3" because, although he did not sign said documents, he personally prepared the same.[29] What Fireman Sitchon did not prepare were the documents which his investigation witnesses presented.[30] However, Fireman Sitchon emphasized that he interviewed said investigation witnesses namely, Ronald Estanislao, the security guard on duty at the time of fire; and Dr. Zenaida Arcilla, manager of CAPP, before he prepared Exh. "P-2" and Exh. "P-3." [31] Hence, while Fireman Sitchon may have had no personal knowledge of the fire incident, Exh. "P-2" and Exh. "P-3," which he prepared based on the statements of his investigation witnesses, especially that of Ronald Estanislao whose official duty it was to report on the incident, are exceptions to the hearsay rule because these are entries in official records.[32] Consequently, his testimony on said documents are competent evidence of the contents thereof. [33]

Furthermore, the petitioners are estopped from contesting the veracity of Exh. "P-3" because, as the CA correctly pointed out, "the aforesaid certification was used by appellants [petitioners] in claiming insurance for their office equipment which were destroyed by the fire." [34]

Even without the testimony of Fireman Sitchon and the documents he prepared, the finding of the RTC and CA on the negligence of petitioners cannot be overturned by petitioners' bare denial. The CA correctly applied the doctrine of *res ipsa loquitur* under which expert testimony may be dispensed with [35] to sustain an allegation of negligence if the following requisites obtain: a) the accident is of a kind which does not ordinarily occur unless someone is negligent; b) the cause of the injury was under the exclusive control of the person in charge and c) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. [36] The fire that damaged Belfrant Building was not a spontaneous natural occurrence but the outcome of a human act or omission. It originated in the store room which petitioners had possession and control of. Respondent had no hand in the incident. Hence, the convergence of these facts and circumstances speaks for itself: petitioners alone having knowledge of the cause of the fire or the best opportunity to ascertain it, and respondent having no means to find out for itself, it is sufficient for the latter to merely allege that the cause of the fire was the negligence of the former and to rely on the occurrence of the fire as proof of such negligence. [37] It was all up to petitioners to dispel such inference of negligence, but their bare denial only left the matter unanswered.

The CA therefore correctly affirmed the RTC in holding petitioners liable to respondent for actual damages consisting of unpaid rentals for the units they leased.

The CA deleted the award of actual damages of P2.2 million which the RTC had granted respondent to cover

costs of building repairs. In lieu of actual damages, temperate damages in the amount of P500,000.00 were awarded by the CA. We find this in order.[38]

Temperate or moderate damages may be availed when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[39] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[40] Without a doubt, respondent suffered some form of pecuniary loss for the impairment of the structural integrity of its building as a result of the fire. However, as correctly pointed out by the CA, because of respondent's inability to present proof of the exact amount of such pecuniary loss, it may only be entitled to temperate damages in the amount of P500,000.00,[41] which we find reasonable and just.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Edgardo P. Cruz, and concurred in by Associate Justices Hilarion L. Aquino and Amelita G. Tolentino, rollo, p. 42.

[2] Rollo, p. 52.

[3] RTC Decision, rollo, p. 52.

[4] Exh. "P-2," id. at 89.

[5] Exh. "P-3," id. at 91.

[6] Id. at 71.

[7] Id. at 81.

[8] Rollo, p. 81.

[9] Id. at 84.

[10] Id. at 86.

[11] Id. at 68.

[12] Rollo, p. 49.

[13] Id. at 232-234.

[14] Id. at 17.

[15] *Mindex v. Morillo*, 428 Phil. 934, 943 (2002).

[16] *Guevent Industrial Development Corporation v. Philippine Lexus Amusement Corporation*, G.R. No. 159279, July 11, 2006, 494 SCRA 555, 558.

[17] *Philippine Communications Satellite Corp. v. Globe Telecom, Inc.*, G.R. No. 147324, May 25, 2004, 429 SCRA 153, 160.

- [18] *Real v. Belo*, G.R. No. 146224, January 26, 2007, 513 SCRA 111, 124.
- [19] *Sicam v. Jorge*, G.R. No. 159617, August 8, 2007; *MIAA v. Ala Industries Corporation*, 467 Phil. 229, 247 (2004).
- [20] RTC Decision, rollo, p. 54.
- [21] *Id.* at 333-334.
- [22] CA Decision, rollo, pp. 46-47.
- [23] Petition, rollo, p. 26.
- [24] *Id.* at 18-19.
- [25] *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 697.
- [26] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 161.
- [27] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 253.
- [28] *Estacion v. Bernardo*, G.R. No. 144724, February 27, 2006, 483 SCRA 222, 231-232.
- [29] TSN, March 19, 1996, p. 9, rollo, p. 157.
- [30] TSN, March 19, 1996, pp. 10-11, rollo, pp. 158-159.
- [31] *Id.* at 160-161.
- [32] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 326.
- [33] *Country Bankers Insurance Corporation v. Liangga Bay and Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 521 (2002).
- [34] CA Decision, rollo, pp. 46-47.
- [35] *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87, 96 (2000).
- [36] *DM Consunji v. Court of Appeals*, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 259.
- [37] *Perla Compania de Seguros v. Sarangaya III*, G.R. No. 147746, October 25, 2005, 474 SCRA 191, 199.
- [38] *Victory Liner v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 370.
- [39] *Republic v. Tuvera*, G.R. No. 148246, February 16, 2007, 516 SCRA 113, 152.
- [40] *Hernandez v. Dolor*, G.R. No. 160286, July 30, 2004, 435 SCRA 668, 677-678.
- [41] CA Decision, rollo, pp. 47-48.

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