

SPS. MOISES AND CLEMENCIA ANDRADA, PETITIONERS, VS. PILHINO SALES CORPORATION, REPRESENTED BY ITS BRANCH MANAGER, JOJO S. SAET, RESPONDENT.

G.R. No. 156448. February 23, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

An appeal by petition for review on certiorari under Rule 45 shall raise only questions of law. Thus, the herein petition for review must fail for raising a question essentially of fact.

Antecedents

On December 28, 1990, respondent Pilhino Sales Corporation (Pilhino) sued Jose Andrada, Jr. and his wife, Maxima, in the Regional Trial Court in Davao City (RTC) to recover the principal sum of P240,863.00, plus interest and incidental charges (Civil Case No. 20,489-90). Upon Pilhino's application, the RTC issued a writ of preliminary attachment, which came to be implemented against a Hino truck and a Fuso truck both owned by Jose Andrada, Jr. However, the levies on attachment were lifted after Jose filed a counter-attachment bond.

In due course, the RTC rendered a decision against Jose Andrada, Jr. and his wife. Pilhino opted to enforce the writ of execution against the properties of the Andradas instead of claiming against the counter-attachment bond considering that the premium on the bond had not been paid. As a result, the sheriff seized the Hino truck and sold it at the ensuing public auction, with Pilhino as the highest bidder. However, the Hino truck could not be transferred to Pilhino's name due to its having been already registered in the name of petitioner Moises Andrada. It appears that the Hino truck had been meanwhile sold by Jose Andrada, Jr. to Moises Andrada, which sale was unknown to Pilhino, and that Moises had mortgaged the truck to BA Finance Corporation (BA Finance) to secure his own obligation.

BA Finance sued Moises Andrada for his failure to pay the loan (Civil Case No. 5117). After a decision was rendered in the action in favor of BA Finance, a writ of execution issued, by which the sheriff levied upon and seized the Hino truck while it was in the possession of Pilhino and sold it at public auction, with BA Finance as the highest bidder.

Consequently, Pilhino instituted this action in the RTC in Davao City against Spouses Jose Andrada, Jr. and Maxima Andrada, Spouses Moises Andrada and Clemencia Andrada, Jose Andrada, Sr., BA Finance, Land Transportation Office (in Surallah, South Cotabato), and the Registrar of Deeds of General Santos City to annul the following: (a) the deed of sale between Jose Andrada, Jr. and Moises Andrada; (b) the chattel mortgage involving the Hino truck between Moises Andrada and BA Finance; (c) the deed of conveyance executed by Jose Andrada, Jr. in favor of his father, Jose Andrada, Sr., involving a hard-top jeep; and (d) the certificate of registration of the Hino truck in the name of Moises Andrada as well as the registration of the chattel mortgage with the Registry of Deeds of General Santos City. The action was docketed as Civil Case No. 21,898-93.

Of the Andradas who were defendants in Civil Case No. 21,898-93, only Moises Andrada and his wife filed their responsive pleading. Later on, Jose Andrada, Jr. and his wife and Pilhino submitted a compromise agreement dated August 20, 1993. They submitted a second compromise agreement dated March 4, 1994 because the first was found to be defective and incomplete. The RTC thereafter rendered a partial judgment on March 21, 1994 based on the second compromise agreement. After that, further proceedings were taken in Civil Case No. 21,898-93 only with respect to Moises Andrada and his wife, and BA Finance.

Moises Andrada and his wife averred as defenses that they had already acquired the Hino truck from Jose Andrada, Jr. free from any lien or encumbrance prior to its seizure by the sheriff pursuant to the writ of execution issued in Civil Case No. 20,489-90; that their acquisition had been made in good faith, considering that at the time of the sale the preliminary attachment had already been lifted; and that Pilhino's recourse was to proceed against the counter-attachment bond.

For its part, BA Finance claimed lack of knowledge of the truth of the material allegations of the complaint of Pilhino; and insisted that the Hino truck had been validly mortgaged to it by Moises Andrada, the lawful owner, to secure his own valid obligation.

On March 25, 1998, the RTC, citing the compromise agreement between Pilhino and Jose Andrada, Jr. that had settled all the claims of Pilhino against Jose Andrada, Jr., and the good faith of Pilhino and BA Finance in filing their respective actions, rendered its decision in Civil Case No. 21,898-93,[1] disposing:

WHEREFORE, judgment is rendered dismissing this case insofar as the spouses Moises Andrada and Clemencia Andrada, Jose Andrada, Sr. and BA Finance Corporation, now accordingly BA Savings Bank, including the counterclaims.

SO ORDERED.

Spouses Moises and Clemencia Andrada appealed the decision rendered on March 25, 1998 to the extent that the RTC thereby: (a) dismissed their counterclaim; (b) declared that the deed of sale of the Hino truck between Jose Andrada, Jr. and Moises Andrada had been simulated; and (c) approved the compromise agreement between Pilhino and Spouses Jose Andrada, Jr. and Maxima Andrada.

On December 13, 2001, the Court of Appeals (CA) promulgated its decision, as follows:[2]

WHEREFORE, the judgment appealed from is AFFIRMED with the modification that the sale of the Hino truck by defendant Jose Andrada, Jr. in favor of defendant-appellant Moises Andrada is declared valid, subject to the rights of BA Finance as mortgagee and highest bidder.

SO ORDERED.

Spouses Moises and Clemencia Andrada are now before the Court via petition for review on certiorari to pose the following issues: [3]

- Whether or not Pilhino should be held liable for the damages the petitioners sustained from Pilhino's levy on execution upon the Hino truck under Civil Case No. 20, 489-90; and
- Whether or not Pilhino was guilty of bad faith when it proceeded with the levy on execution upon the Hino truck owned by Moises Andrada.

Ruling

We find no merit in the petition for review.

The petitioners assail the decision promulgated by the CA to the extent that it denied their claim for the damages

they had sought by way of counterclaim. They anchored their claim on Article 21 of the Civil Code, which provides that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage."

Article 21 of the Civil Code, in conjunction with Article 19 of the Civil Code, is part of the cause of action known in this jurisdiction as "abuse of rights." The elements of abuse of rights are: (a) there is a legal right or duty; (b) exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[4]

In its assailed decision, the CA found that Pilhino had acted in good faith in bringing Civil Case No. 21, 898-93 to annul the deed of sale involving the Hino truck executed by Jose Andrada, Jr. in favor of Moises Andrada, considering that Pilhino had "believed that the sale in favor of defendants-appellants [had been] resorted to so that Jose Andrada [might] evade his obligations." [5] The CA concluded that no remedy was available for any damages that the petitioners sustained from the filing of Civil Case No. 21, 898-93 against them because "the law affords no remedy for such damages resulting from an act which does not amount to a legal injury or wrong." [6]

Worthy to note is that the CA's finding and conclusion rested on the RTC's own persuasion that the sale of the Hino truck to Moises Andrada had been simulated. [7]

Yet, the petitioners still insist in this appeal that both lower courts erred in their conclusion on the absence of bad faith on the part of Pilhino.

We cannot side with the petitioners. Their insistence, which represents their disagreement with the CA's declaration that the second and third elements of abuse of rights, *supra*, were not established, requires the consideration and review of factual issues. Hence, this appeal cannot succeed, for an appeal by petition for review on certiorari cannot determine factual issues. In the exercise of its power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. Perforce, the findings of fact by the CA are conclusive and binding on the Court. This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the Rules of Court, viz:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a) [8]

It is true that the Court has, at times, allowed exceptions from the restriction. Among the recognized exceptions are the following, to wit: [9]

- (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
- (b) When the inference made is manifestly mistaken, absurd, or impossible;
- (c) When there is grave abuse of discretion;
- (d) When the judgment is based on a misapprehension of facts;
- (e) When the findings of facts are conflicting;
- (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the CA's findings are contrary to those by the trial court;
- (h) When the findings are conclusions without citation of specific evidence on which they are based;
- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly

considered, would justify a different conclusion.

However, the circumstances of this case do not warrant reversing or modifying the findings of the CA, which are consistent with the established facts. Verily, the petitioners did not prove the concurrence of the elements of abuse of rights.

The petitioners further seek attorney's fees based on Article 2208 (4) of the Civil Code, which provides that "in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except xxx (4) in cases of clearly unfounded civil action or proceeding against the plaintiff xxx."

The petitioners are not entitled to attorney's fees.

It is well accepted in this jurisdiction that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[10] Indeed, before the effectivity of the new Civil Code, such fees could not be recovered in the absence of a stipulation.[11] It was only with the advent of the new Civil Code that the right to collect attorney's fees in the instances mentioned in Article 2208 was recognized,[12] and such fees are now included in the concept of actual damages.[13] One such instance is where the defendant is guilty of gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.[14] This is a corollary of the general principle expressed in Article 19 of the Civil Code that everyone must, in the performance of his duties, observe honesty and good faith and the rule embodied in Article 1170 that anyone guilty of fraud (bad faith) in the performance of his obligation shall be liable for damages.

But, as noted by the Court in *Morales v. Court of Appeals*,^[15] the award of attorney's fees is the exception rather than the rule. The power of a court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation and conjecture.[16] The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[17]

Herein, the element of bad faith on the part of Pilhino in commencing and prosecuting Civil Case No. 21, 898-93, which was necessary to predicate the lawful grant of attorney's fees based on Article 2208 (4) of the Civil Code, was not established. Accordingly, the petitioners' demand for attorney's fees must fail.

WHEREFORE, we deny the petition for review on certiorari for its lack of merit, and affirm the decision of the Court of Appeals.

SO ORDERED.

Brion, (Acting Chairperson),[*] Bersamin, Abad,**] Villarama, Jr., and Sereno, JJ., concur.

[*] Acting Chairperson in lieu of Justice Conchita Carpio Morales who is on leave per Special Order No. 925 dated January 24, 2011.

[**] Additional member per Special Order No. 926 dated January 24, 2011.

[1] Rollo, pp. 32-40.

[2] *Id.*, pp. 71-81; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but already retired), and concurred in by Associate Justice Renato C. Dacudao (retired) and Associate Justice Mariano C. Del Castillo (now a Member of the Court).

[3] *Id.*, pp. 14-15.

[4] Albenson Enterprises Corp. v. Court of Appeals, G.R. No.88694, January 11, 1993, 217 SCRA 16, 25.

[5] Rollo, p. 80.

[6] Ibid.

[7] Id., pp. 37-38. The RTC said:

The evidence adduced by the plaintiff is convincing that the DEED OF SALE OF A MOTOR VEHICLE (Exh. "K") executed by Jose Andrada, Jr. in favor of his brother Moises was simulated to put it beyond the reach of his creditors, especially the plaintiff, considering that the purported consideration for the Hino truck was only P50,000.00; and that only three days after the purported sale, Moises Andrada was able to secure a loan from the BA Finance in the amount of P235,632.00 by giving the Hino truck as collateral; and that thereafter, Jose Andrada, Jr. continued to operate the Hino truck in hauling for Dole Philippines. This finding by this Court is notwithstanding the Special Power of Attorney executed by Moises Andrada in favor of Jose Andrada, Jr. and the former's explanation about his not having yet an approved franchise from the LTFRB. It is hard to believe that, after selling the Hino truck to Moises for only P50,000.00 even when it was being utilized in his hauling business with Dole Philippines, Jose Andrada, Jr. would agree to continue to operate it in that same business for the benefit of Moises Andrada, the buyer! Why did he sell it to him for P50,000.00 only in the first place?

[8] The rule, which has been amended by A.M. No. 07-7-12-SC, effective December 27, 2007, now reads:

Section 1. Filing of petition with Supreme Court. --A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[9] Sampayan v. Court of Appeals, G.R. No. 156360, January 14, 2005, 448 SCRA 220; Insular Life Assurance Company, Ltd. v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79; Langkaan Realty Development, Inc. v. United Coconut Planters Bank, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; Nokom v. National Labor Relations Commission, G.R. No. 140043, July 18, 2000, 336 SCRA 97; Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc., G.R. No. 96262, March 22, 1999, 305 SCRA 70; Sta. Maria v. Court of Appeals, G.R. No. 127549, January 28, 1998, 285 SCRA 351.

[10] Tanay Recreation Center and Development Corporation v. Fausto, G.R. No. 140182. April 12, 2005, 455 SCRA 436 ; Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd., G.R. No. L-17106, October 19, 1966, 18 SCRA 356, 358; Heirs of Basilia Justiva v. Gustilo, L-16396, January 31, 1963, 7 SCRA 72.

[11] Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd., supra.

[12] See Reyes v. Yatco, 100 Phil. 964 (1957); Tan Ti v. Alvear, 26 Phil. 566 (1914); Castueras v. Bayona, 106 Phil. 340.

[13] Fores v. Miranda, 105 Phil. 266 (1959).

[14] Article 2208 (5), Civil Code.

[15] G. R. No. 117228, June 19, 1997; 274 SCRA 282, 309.

[16] Citing Scott Consultants & Resource Development Corporation v. Court of Appeals, G.R. No. 112911,

March 16, 1995, 242 SCRA 393, 406.

[17] Citing *Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd.*, G.R. No. L-17106, October 19, 1966, 18 SCRA 356, 358; *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240.

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