ROBERTO C. SICAM AND AGENCIA DE R.C. SICAM, INC., PETITIONERS, VS. LULU V. JORGE AND CESAR JORGE, RESPONDENTS.

G.R. NO. 159617. August 08, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari filed by Roberto C. Sicam, Jr. (petitioner Sicam) and Agencia de R.C. Sicam, Inc. (petitioner corporation) seeking to annul the Decision[1] of the Court of Appeals dated March 31, 2003, and its Resolution[2] dated August 8, 2003, in CA G.R. CV No. 56633.

It appears that on different dates from September to October 1987, Lulu V. Jorge (respondent Lulu) pawned several pieces of jewelry with Agencia de R. C. Sicam located at No. 17 Aguirre Ave., BF Homes Parañaque, Metro Manila, to secure a loan in the total amount of P59,500.00.

On October 19, 1987, two armed men entered the pawnshop and took away whatever cash and jewelry were found inside the pawnshop vault. The incident was entered in the police blotter of the Southern Police District, Parañaque Police Station as follows:

> Investigation shows that at above TDPO, while victims were inside the office, two (2) male unidentified persons entered into the said office with guns drawn. Suspects(sic) (1) went straight inside and poked his gun toward Romeo Sicam and thereby tied him with an electric wire while suspects (sic) (2) poked his gun toward Divina Mata and Isabelita Rodriguez and ordered them to lay (sic) face flat on the floor. Suspects asked forcibly the case and assorted pawned jewelries items mentioned above.
>
> Suspects after taking the money and jewelries fled on board a Marson Toyota unidentified plate number.[3]

Petitioner Sicam sent respondent Lulu a letter dated October 19, 1987 informing her of the loss of her jewelry due to the robbery incident in the pawnshop. On November 2, 1987, respondent Lulu then wrote a letter[4] to petitioner Sicam expressing disbelief stating that when the robbery happened, all jewelry pawned were deposited with Far East Bank near the pawnshop since it had been the practice that before they could withdraw, advance notice must be given to the pawnshop so it could withdraw the jewelry from the bank. Respondent Lulu then requested petitioner Sicam to prepare the pawned jewelry for withdrawal on November 6, 1987 but petitioner Sicam failed to return the jewelry.

On September 28, 1988, respondent Lulu joined by her husband, Cesar Jorge, filed a complaint against petitioner Sicam with the Regional Trial Court of Makati seeking indemnification for the loss of pawned jewelry and payment of actual, moral and exemplary damages as well as attorney's fees. The case was docketed as Civil Case No. 88-2035.

Petitioner Sicam filed his Answer contending that he is not the real party-in-interest as the pawnshop was incorporated on April 20, 1987 and known as Agencia de R.C. Sicam, Inc; that petitioner corporation had

exercised due care and diligence in the safekeeping of the articles pledged with it and could not be made liable for an event that is fortuitous.

Respondents subsequently filed an Amended Complaint to include petitioner corporation.

Thereafter, petitioner Sicam filed a Motion to Dismiss as far as he is concerned considering that he is not the real party-in-interest. Respondents opposed the same. The RTC denied the motion in an Order dated November 8, 1989.[5]

After trial on the merits, the RTC rendered its Decision[6] dated January 12, 1993, dismissing respondents' complaint as well as petitioners' counterclaim. The RTC held that petitioner Sicam could not be made personally liable for a claim arising out of a corporate transaction; that in the Amended Complaint of respondents, they asserted that "plaintiff pawned assorted jewelries in defendants' pawnshop"; and that as a consequence of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of a stockholder.

The RTC further ruled that petitioner corporation could not be held liable for the loss of the pawned jewelry since it had not been rebutted by respondents that the loss of the pledged pieces of jewelry in the possession of the corporation was occasioned by armed robbery; that robbery is a fortuitous event which exempts the victim from liability for the loss, citing the case of Austria v. Court of Appeals;[7] and that the parties' transaction was that of a pledgor and pledgee and under Art. 1174 of the Civil Code, the pawnshop as a pledgee is not responsible for those events which could not be foreseen.

Respondents appealed the RTC Decision to the CA. In a Decision dated March 31, 2003, the CA reversed the RTC, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the instant Appeal is GRANTED, and the Decision dated January 12, 1993,of the Regional Trial Court of Makati, Branch 62, is hereby REVERSED and SET ASIDE, ordering the appellees to pay appellants the actual value of the lost jewelry amounting to P272,000.00, and attorney' fees of P27,200.00.[8]

In finding petitioner Sicam liable together with petitioner corporation, the CA applied the doctrine of piercing the veil of corporate entity reasoning that respondents were misled into thinking that they were dealing with the pawnshop owned by petitioner Sicam as all the pawnshop tickets issued to them bear the words "Agencia de R.C. Sicam"; and that there was no indication on the pawnshop tickets that it was the petitioner corporation that owned the pawnshop which explained why respondents had to amend their complaint impleading petitioner corporation.

The CA further held that the corresponding diligence required of a pawnshop is that it should take steps to secure and protect the pledged items and should take steps to insure itself against the loss of articles which are entrusted to its custody as it derives earnings from the pawnshop trade which petitioners failed to do; that Austria is not applicable to this case since the robbery incident happened in 1961 when the criminality had not as yet reached the levels attained in the present day; that they are at least guilty of contributory negligence and should be held liable for the loss of jewelries; and that robberies and hold-ups are foreseeable risks in that those engaged in the pawnshop business are expected to foresee.

The CA concluded that both petitioners should be jointly and severally held liable to respondents for the loss of the pawned jewelry.

Petitioners' motion for reconsideration was denied in a Resolution dated August 8, 2003.

Hence, the instant petition for review with the following assignment of errors:

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> THE COURT OF APPEALS ERRED AND WHEN IT DID, IT OPENED ITSELF TO REVERSAL, WHEN IT ADOPTED UNCRITICALLY (IN FACT IT REPRODUCED AS ITS OWN WITHOUT IN THE MEANTIME ACKNOWLEDGING IT) WHAT THE RESPONDENTS ARGUED IN THEIR BRIEF, WHICH ARGUMENT WAS PALPABLY UNSUSTAINABLE.
>
> THE COURT OF APPEALS ERRED, AND WHEN IT DID, IT OPENED ITSELF TO REVERSAL BY THIS HONORABLE COURT, WHEN IT AGAIN ADOPTED UNCRITICALLY (BUT WITHOUT ACKNOWLEDGING IT) THE SUBMISSIONS OF THE RESPONDENTS IN THEIR BRIEF WITHOUT ADDING ANYTHING MORE THERETO DESPITE THE FACT THAT THE SAID ARGUMENT OF THE RESPONDENTS COULD NOT HAVE BEEN SUSTAINED IN VIEW OF UNREBUTTED EVIDENCE ON RECORD.[9]

Anent the first assigned error, petitioners point out that the CA's finding that petitioner Sicam is personally liable for the loss of the pawned jewelries is "a virtual and uncritical reproduction of the arguments set out on pp. 5-6 of the Appellants' brief."[10]

Petitioners argue that the reproduced arguments of respondents in their Appellants' Brief suffer from infirmities, as follows:

> (1) Respondents conclusively asserted in paragraph 2 of their Amended Complaint that Agencia de R.C. Sicam, Inc. is the present owner of Agencia de R.C. Sicam Pawnshop, and therefore, the CA cannot rule against said conclusive assertion of respondents;
>
> (2) The issue resolved against petitioner Sicam was not among those raised and litigated in the trial court; and
>
> (3) By reason of the above infirmities, it was error for the CA to have pierced the corporate veil since a corporation has a personality distinct and separate from its individual stockholders or members.

Anent the second error, petitioners point out that the CA finding on their negligence is likewise an unedited reproduction of respondents' brief which had the following defects:

> (1) There were unrebutted evidence on record that petitioners had observed the diligence required of them, i.e, they wanted to open a vault with a nearby bank for purposes of safekeeping the pawned articles but was discouraged by the Central Bank (CB) since CB rules provide that they can only store the pawned articles in a vault inside the pawnshop premises and no other place;
>
> (2) Petitioners were adjudged negligent as they did not take insurance against the loss of the pledged jelweries, but it is judicial notice that due to high incidence of crimes, insurance companies refused to cover pawnshops and banks because of high probability of losses due to robberies;
>
> (3) In Hernandez v. Chairman, Commission on Audit (179 SCRA 39, 45-46), the victim of robbery was exonerated from liability for the sum of money belonging to others and lost by him to robbers.

Respondents filed their Comment and petitioners filed their Reply thereto. The parties subsequently submitted their respective Memoranda.

We find no merit in the petition.

To begin with, although it is true that indeed the CA findings were exact reproductions of the arguments raised in respondents' (appellants') brief filed with the CA, we find the same to be not fatally infirmed. Upon examination of the Decision, we find that it expressed clearly and distinctly the facts and the law on which it is based as required by Section 8, Article VIII of the Constitution. The discretion to decide a case one way or another is broad enough to justify the adoption of the arguments put forth by one of the parties, as long as these are legally tenable and supported by law and the facts on records.[11]

Our jurisdiction under Rule 45 of the Rules of Court is limited to the review of errors of law committed by the appellate court. Generally, the findings of fact of the appellate court are deemed conclusive and we are not duty-bound to analyze and calibrate all over again the evidence adduced by the parties in the court a quo.[12] This rule, however, is not without exceptions, such as where the factual findings of the Court of Appeals and the trial court are conflicting or contradictory[13] as is obtaining in the instant case.

However, after a careful examination of the records, we find no justification to absolve petitioner Sicam from liability.

The CA correctly pierced the veil of the corporate fiction and adjudged petitioner Sicam liable together with petitioner corporation. The rule is that the veil of corporate fiction may be pierced when made as a shield to perpetrate fraud and/or confuse legitimate issues. [14] The theory of corporate entity was not meant to promote unfair objectives or otherwise to shield them.[15]

Notably, the evidence on record shows that at the time respondent Lulu pawned her jewelry, the pawnshop was owned by petitioner Sicam himself. As correctly observed by the CA, in all the pawnshop receipts issued to respondent Lulu in September 1987, all bear the words "Agencia de R. C. Sicam," notwithstanding that the pawnshop was allegedly incorporated in April 1987. The receipts issued after such alleged incorporation were still in the name of "Agencia de R. C. Sicam," thus inevitably misleading, or at the very least, creating the wrong impression to respondents and the public as well, that the pawnshop was owned solely by petitioner Sicam and not by a corporation.

Even petitioners' counsel, Atty. Marcial T. Balgos, in his letter[16] dated October 15, 1987 addressed to the Central Bank, expressly referred to petitioner Sicam as the proprietor of the pawnshop notwithstanding the alleged incorporation in April 1987.

We also find no merit in petitioners' argument that since respondents had alleged in their Amended Complaint that petitioner corporation is the present owner of the pawnshop, the CA is bound to decide the case on that basis.

Section 4 Rule 129 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Thus, the general rule that a judicial admission is conclusive upon the party making it and does not require proof, admits of two exceptions, to wit: (1) when it is shown that such admission was made through palpable mistake, and (2) when it is shown that no such admission was in fact made. The latter exception allows one to contradict an admission by denying that he made such an admission.[17]

The Committee on the Revision of the Rules of Court explained the second exception in this wise:

> x x x if a party invokes an "admission" by an adverse party, but cites the admission "out of context," then the one making the "admission" may show that he made no "such" admission, or that his admission was taken out of context.
>
> x x x that the party can also show that he made no "such admission", i.e., not in the sense in which the admission is made to appear.
>
> That is the reason for the modifier "such" because if the rule simply states that the admission may be contradicted by showing that "no admission was made," the rule would not really be providing for a contradiction of the admission but just a denial.[18] (Emphasis supplied).

While it is true that respondents alleged in their Amended Complaint that petitioner corporation is the present

owner of the pawnshop, they did so only because petitioner Sicam alleged in his Answer to the original complaint filed against him that he was not the real party-in-interest as the pawnshop was incorporated in April 1987. Moreover, a reading of the Amended Complaint in its entirety shows that respondents referred to both petitioner Sicam and petitioner corporation where they (respondents) pawned their assorted pieces of jewelry and ascribed to both the failure to observe due diligence commensurate with the business which resulted in the loss of their pawned jewelry.

Markedly, respondents, in their Opposition to petitioners' Motion to Dismiss Amended Complaint, insofar as petitioner Sicam is concerned, averred as follows:

> Roberto C. Sicam was named the defendant in the original complaint because the pawnshop tickets involved in this case did not show that the R.C. Sicam Pawnshop was a corporation. In paragraph 1 of his Answer, he admitted the allegations in paragraph 1 and 2 of the Complaint. He merely added "that defendant is not now the real party in interest in this case."
>
> It was defendant Sicam's omission to correct the pawnshop tickets used in the subject transactions in this case which was the cause of the instant action. He cannot now ask for the dismissal of the complaint against him simply on the mere allegation that his pawnshop business is now incorporated. It is a matter of defense, the merit of which can only be reached after consideration of the evidence to be presented in due course.[19]

Unmistakably, the alleged admission made in respondents' Amended Complaint was taken "out of context" by petitioner Sicam to suit his own purpose. Ineluctably, the fact that petitioner Sicam continued to issue pawnshop receipts under his name and not under the corporation's name militates for the piercing of the corporate veil.

We likewise find no merit in petitioners' contention that the CA erred in piercing the veil of corporate fiction of petitioner corporation, as it was not an issue raised and litigated before the RTC.

Petitioner Sicam had alleged in his Answer filed with the trial court that he was not the real party-in-interest because since April 20, 1987, the pawnshop business initiated by him was incorporated and known as Agencia de R.C. Sicam. In the pre-trial brief filed by petitioner Sicam, he submitted that as far as he was concerned, the basic issue was whether he is the real party in interest against whom the complaint should be directed.[20] In fact, he subsequently moved for the dismissal of the complaint as to him but was not favorably acted upon by the trial court. Moreover, the issue was squarely passed upon, although erroneously, by the trial court in its Decision in this manner:

> x x x The defendant Roberto Sicam, Jr likewise denies liability as far as he is concerned for the reason that he cannot be made personally liable for a claim arising from a corporate transaction.
>
> This Court sustains the contention of the defendant Roberto C. Sicam, Jr. The amended complaint itself asserts that "plaintiff pawned assorted jewelries in defendant's pawnshop." It has been held that " as a consequence of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder, nor is the stockholder's debt or credit that of a corporation.[21]

Clearly, in view of the alleged incorporation of the pawnshop, the issue of whether petitioner Sicam is personally liable is inextricably connected with the determination of the question whether the doctrine of piercing the corporate veil should or should not apply to the case.

The next question is whether petitioners are liable for the loss of the pawned articles in their possession.

Petitioners insist that they are not liable since robbery is a fortuitous event and they are not negligent at all.

We are not persuaded.

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Article 1174 of the Civil Code 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.

Fortuitous events by definition are extraordinary events not foreseeable or avoidable. It is therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed but it must be one impossible to foresee or to avoid. The mere difficulty to foresee the happening is not impossibility to foresee the same. [22]

To constitute a fortuitous event, the following elements must concur: (a) the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must be independent of human will; (b) it must be impossible to foresee the event that constitutes the caso fortuito or, if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner; and, (d) the obligor must be free from any participation in the aggravation of the injury or loss. [23]

The burden of proving that the loss was due to a fortuitous event rests on him who invokes it.[24] And, in order for a fortuitous event to exempt one from liability, it is necessary that one has committed no negligence or misconduct that may have occasioned the loss. [25]

It has been held that an act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of such a loss. One's negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability. When the effect is found to be partly the result of a person's participation -- whether by active intervention, neglect or failure to act -- the whole occurrence is humanized and removed from the rules applicable to acts of God. [26]

Petitioner Sicam had testified that there was a security guard in their pawnshop at the time of the robbery. He likewise testified that when he started the pawnshop business in 1983, he thought of opening a vault with the nearby bank for the purpose of safekeeping the valuables but was discouraged by the Central Bank since pawned articles should only be stored in a vault inside the pawnshop. The very measures which petitioners had allegedly adopted show that to them the possibility of robbery was not only foreseeable, but actually foreseen and anticipated. Petitioner Sicam's testimony, in effect, contradicts petitioners' defense of fortuitous event.

Moreover, petitioners failed to show that they were free from any negligence by which the loss of the pawned jewelry may have been occasioned.

Robbery per se, just like carnapping, is not a fortuitous event. It does not foreclose the possibility of negligence on the part of herein petitioners. In Co v. Court of Appeals,[27] the Court held:

> It is not a defense for a repair shop of motor vehicles to escape liability simply because the damage or loss of a thing lawfully placed in its possession was due to carnapping. Carnapping per se cannot be considered as a fortuitous event. The fact that a thing was unlawfully and forcefully taken from another's rightful possession, as in cases of carnapping, does not automatically give rise to a fortuitous event. To be considered as such, carnapping entails more than the mere forceful taking of another's property. It must be proved and established that the event was an act of God or was done solely by third parties and that neither the claimant nor the person alleged to be negligent has any participation. In accordance with the Rules of Evidence, the burden of proving that the loss was due to a fortuitous event rests on him who invokes it - which in this case is the private respondent. However, other than the police report of the alleged carnapping incident, no other evidence was

> presented by private respondent to the effect that the incident was not due to its fault. A police report of an alleged crime, to which only private respondent is privy, does not suffice to establish the carnapping. Neither does it prove that there was no fault on the part of private respondent notwithstanding the parties' agreement at the pre-trial that the car was carnapped. Carnapping does not foreclose the possibility of fault or negligence on the part of private respondent.[28]

Just like in Co, petitioners merely presented the police report of the Parañaque Police Station on the robbery committed based on the report of petitioners' employees which is not sufficient to establish robbery. Such report also does not prove that petitioners were not at fault.

On the contrary, by the very evidence of petitioners, the CA did not err in finding that petitioners are guilty of concurrent or contributory negligence as provided in Article 1170 of the Civil Code, to wit:

> Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.[29]

Article 2123 of the Civil Code provides that with regard to pawnshops and other establishments which are engaged in making loans secured by pledges, the special laws and regulations concerning them shall be observed, and subsidiarily, the provisions on pledge, mortgage and antichresis.

The provision on pledge, particularly Article 2099 of the Civil Code, provides that the creditor shall take care of the thing pledged with the diligence of a good father of a family. This means that petitioners must take care of the pawns the way a prudent person would as to his own property.

In this connection, Article 1173 of the Civil Code further provides:

> Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2 shall apply.
>
> If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

We expounded in Cruz v. Gangan[30] that negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do; or the doing of something which a prudent and reasonable man would not do.[31] It is want of care required by the circumstances.

A review of the records clearly shows that petitioners failed to exercise reasonable care and caution that an ordinarily prudent person would have used in the same situation. Petitioners were guilty of negligence in the operation of their pawnshop business. Petitioner Sicam testified, thus:

> Court:
>
> Q. Do you have security guards in your pawnshop?
> A. Yes, your honor.
>
> Q. Then how come that the robbers were able to enter the premises when according to you there was a security guard?
> A. Sir, if these robbers can rob a bank, how much more a pawnshop.
>
> Q. I am asking you how were the robbers able to enter despite the fact that there was a security guard?
> A. At the time of the incident which happened about 1:00 and 2:00 o'clock in the afternoon and it happened on a Saturday and everything was quiet in the area BF Homes Parañaque they pretended to pawn an article in the

> pawnshop, so one of my employees allowed him to come in and it was only when it was announced that it was a hold up.
>
> Q. Did you come to know how the vault was opened?
> A. When the pawnshop is official (sic) open your honor the pawnshop is partly open. The combination is off.
>
> Q. No one open (sic) the vault for the robbers?
> A. No one your honor it was open at the time of the robbery.
>
> Q. It is clear now that at the time of the robbery the vault was open the reason why the robbers were able to get all the items pawned to you inside the vault.
> A. Yes sir.[32]

revealing that there were no security measures adopted by petitioners in the operation of the pawnshop. Evidently, no sufficient precaution and vigilance were adopted by petitioners to protect the pawnshop from unlawful intrusion. There was no clear showing that there was any security guard at all. Or if there was one, that he had sufficient training in securing a pawnshop. Further, there is no showing that the alleged security guard exercised all that was necessary to prevent any untoward incident or to ensure that no suspicious individuals were allowed to enter the premises. In fact, it is even doubtful that there was a security guard, since it is quite impossible that he would not have noticed that the robbers were armed with caliber .45 pistols each, which were allegedly poked at the employees.[33] Significantly, the alleged security guard was not presented at all to corroborate petitioner Sicam's claim; not one of petitioners' employees who were present during the robbery incident testified in court.

Furthermore, petitioner Sicam's admission that the vault was open at the time of robbery is clearly a proof of petitioners' failure to observe the care, precaution and vigilance that the circumstances justly demanded. Petitioner Sicam testified that once the pawnshop was open, the combination was already off. Considering petitioner Sicam's testimony that the robbery took place on a Saturday afternoon and the area in BF Homes Parañaque at that time was quiet, there was more reason for petitioners to have exercised reasonable foresight and diligence in protecting the pawned jewelries. Instead of taking the precaution to protect them, they let open the vault, providing no difficulty for the robbers to cart away the pawned articles.

We, however, do not agree with the CA when it found petitioners negligent for not taking steps to insure themselves against loss of the pawned jewelries.

Under Section 17 of Central Bank Circular No. 374, Rules and Regulations for Pawnshops, which took effect on July 13, 1973, and which was issued pursuant to Presidential Decree No. 114, Pawnshop Regulation Act, it is provided that pawns pledged must be insured, to wit:

> Sec. 17. Insurance of Office Building and Pawns- The place of business of a pawnshop and the pawns pledged to it must be insured against fire and against burglary as well as for the latter(sic), by an insurance company accredited by the Insurance Commissioner.

However, this Section was subsequently amended by CB Circular No. 764 which took effect on October 1, 1980, to wit:

> Sec. 17 Insurance of Office Building and Pawns - The office building/premises and pawns of a pawnshop must be insured against fire. (emphasis supplied).

where the requirement that insurance against burglary was deleted. Obviously, the Central Bank considered it not feasible to require insurance of pawned articles against burglary.

The robbery in the pawnshop happened in 1987, and considering the above-quoted amendment, there is no

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statutory duty imposed on petitioners to insure the pawned jewelry in which case it was error for the CA to consider it as a factor in concluding that petitioners were negligent.

Nevertheless, the preponderance of evidence shows that petitioners failed to exercise the diligence required of them under the Civil Code.

The diligence with which the law requires the individual at all times to govern his conduct varies with the nature of the situation in which he is placed and the importance of the act which he is to perform.[34] Thus, the cases of Austria v. Court of Appeals,[35] Hernandez v. Chairman, Commission on Audit[36] and Cruz v. Gangan[37] cited by petitioners in their pleadings, where the victims of robbery were exonerated from liability, find no application to the present case.

In Austria, Maria Abad received from Guillermo Austria a pendant with diamonds to be sold on commission basis, but which Abad failed to subsequently return because of a robbery committed upon her in 1961. The incident became the subject of a criminal case filed against several persons. Austria filed an action against Abad and her husband (Abads) for recovery of the pendant or its value, but the Abads set up the defense that the robbery extinguished their obligation. The RTC ruled in favor of Austria, as the Abads failed to prove robbery; or, if committed, that Maria Abad was guilty of negligence. The CA, however, reversed the RTC decision holding that the fact of robbery was duly established and declared the Abads not responsible for the loss of the jewelry on account of a fortuitous event. We held that for the Abads to be relieved from the civil liability of returning the pendant under Art. 1174 of the Civil Code, it would only be sufficient that the unforeseen event, the robbery, took place without any concurrent fault on the debtor's part, and this can be done by preponderance of evidence; that to be free from liability for reason of fortuitous event, the debtor must, in addition to the casus itself, be free of any concurrent or contributory fault or negligence.[38]

We found in Austria that under the circumstances prevailing at the time the Decision was promulgated in 1971, the City of Manila and its suburbs had a high incidence of crimes against persons and property that rendered travel after nightfall a matter to be sedulously avoided without suitable precaution and protection; that the conduct of Maria Abad in returning alone to her house in the evening carrying jewelry of considerable value would have been negligence per se and would not exempt her from responsibility in the case of robbery. However we did not hold Abad liable for negligence since, the robbery happened ten years previously; i.e., 1961, when criminality had not reached the level of incidence obtaining in 1971.

In contrast, the robbery in this case took place in 1987 when robbery was already prevalent and petitioners in fact had already foreseen it as they wanted to deposit the pawn with a nearby bank for safekeeping. Moreover, unlike in Austria, where no negligence was committed, we found petitioners negligent in securing their pawnshop as earlier discussed.

In Hernandez, Teodoro Hernandez was the OIC and special disbursing officer of the Ternate Beach Project of the Philippine Tourism in Cavite. In the morning of July 1, 1983, a Friday, he went to Manila to encash two checks covering the wages of the employees and the operating expenses of the project. However for some reason, the processing of the check was delayed and was completed at about 3 p.m. Nevertheless, he decided to encash the check because the project employees would be waiting for their pay the following day; otherwise, the workers would have to wait until July 5, the earliest time, when the main office would open. At that time, he had two choices: (1) return to Ternate, Cavite that same afternoon and arrive early evening; or (2) take the money with him to his house in Marilao, Bulacan, spend the night there, and leave for Ternate the following day. He chose the second option, thinking it was the safer one. Thus, a little past 3 p.m., he took a passenger jeep bound for Bulacan. While the jeep was on Epifanio de los Santos Avenue, the jeep was held up and the money kept by Hernandez

was taken, and the robbers jumped out of the jeep and ran. Hernandez chased the robbers and caught up with one robber who was subsequently charged with robbery and pleaded guilty. The other robber who held the stolen money escaped. The Commission on Audit found Hernandez negligent because he had not brought the cash proceeds of the checks to his office in Ternate, Cavite for safekeeping, which is the normal procedure in the handling of funds. We held that Hernandez was not negligent in deciding to encash the check and bringing it home to Marilao, Bulacan instead of Ternate, Cavite due to the lateness of the hour for the following reasons: (1) he was moved by unselfish motive for his co-employees to collect their wages and salaries the following day, a Saturday, a non-working, because to encash the check on July 5, the next working day after July 1, would have caused discomfort to laborers who were dependent on their wages for sustenance; and (2) that choosing Marilao as a safer destination, being nearer, and in view of the comparative hazards in the trips to the two places, said decision seemed logical at that time. We further held that the fact that two robbers attacked him in broad daylight in the jeep while it was on a busy highway and in the presence of other passengers could not be said to be a result of his imprudence and negligence.

Unlike in Hernandez where the robbery happened in a public utility, the robbery in this case took place in the pawnshop which is under the control of petitioners. Petitioners had the means to screen the persons who were allowed entrance to the premises and to protect itself from unlawful intrusion. Petitioners had failed to exercise precautionary measures in ensuring that the robbers were prevented from entering the pawnshop and for keeping the vault open for the day, which paved the way for the robbers to easily cart away the pawned articles.

In Cruz, Dr. Filonila O. Cruz, Camanava District Director of Technological Education and Skills Development Authority (TESDA), boarded the Light Rail Transit (LRT) from Sen. Puyat Avenue to Monumento when her handbag was slashed and the contents were stolen by an unidentified person. Among those stolen were her wallet and the government-issued cellular phone. She then reported the incident to the police authorities; however, the thief was not located, and the cellphone was not recovered. She also reported the loss to the Regional Director of TESDA, and she requested that she be freed from accountability for the cellphone. The Resident Auditor denied her request on the ground that she lacked the diligence required in the custody of government property and was ordered to pay the purchase value in the total amount of P4,238.00. The COA found no sufficient justification to grant the request for relief from accountability. We reversed the ruling and found that riding the LRT cannot per se be denounced as a negligent act more so because Cruz's mode of transit was influenced by time and money considerations; that she boarded the LRT to be able to arrive in Caloocan in time for her 3 pm meeting; that any prudent and rational person under similar circumstance can reasonably be expected to do the same; that possession of a cellphone should not hinder one from boarding the LRT coach as Cruz did considering that whether she rode a jeep or bus, the risk of theft would have also been present; that because of her relatively low position and pay, she was not expected to have her own vehicle or to ride a taxicab; she did not have a government assigned vehicle; that placing the cellphone in a bag away from covetous eyes and holding on to that bag as she did is ordinarily sufficient care of a cellphone while traveling on board the LRT; that the records did not show any specific act of negligence on her part and negligence can never be presumed.

Unlike in the Cruz case, the robbery in this case happened in petitioners' pawnshop and they were negligent in not exercising the precautions justly demanded of a pawnshop.

WHEREFORE, except for the insurance aspect, the Decision of the Court of Appeals dated March 31, 2003 and its Resolution dated August 8, 2003, are AFFIRMED.

Costs against petitioners.

SO ORDERED.

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

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[1]CA rollo, pp. 63-73; Penned by Justice Bernardo P. Abesamis (ret.) and concurred in by Justices Sergio L. Pestaño and Noel G. Tijam.

[2]Id. at p. 114.

[3]Id. at 121; Exhibit "1."

[4]Id. at 107-108; Exhibit "I."

[5]Id. at 63-65; Per Judge Salvador P. de Guzman, Jr.

[6] Id. at 146-147; Penned by Judge Roberto C. Diokno of Branch 62 as the case was unloaded to him.

[7] 148-A Phil. 462 (1971).

[8]CA rollo, p. 72.

[9] Rollo, pp. 5-6.

[10] Rollo, p. 7.

[11]Nuez v. National Labor Relations Commission, G.R. No. 107574, December 28, 1994, 239 SCRA 518, 526.

[12] Litonjua v. Fernandez, G.R. No. 148116, April 14, 2004, 427 SCRA 478, 489 citing Roble v. Arbasa, 414 Phil. 343 (2001).

[13] Fuentes v. Court of Appeals, 335 Phil. 1163, 1168 (1997).

[14]See Jacinto v. Court of Appeals, G.R. No. 80043, June 6, 1991, 198 SCRA 211, 216.

[15] See Sibagat Timber Corporation v. Garcia, G.R. No. 98185, December 11, 1992, 216 SCRA 470, 474.

[16]Id. at 124-125; Exhibit "4".

[17] Atillo III v. Court of Appeals, 334 Phil. 546, 552 (1997).

[18]Minutes of the meeting held on October 22, 1986, p. 9.

[19] Records, p. 67.

[20]Id. at 38.

[21] Id. at 147.

[22] Republic v. Luzon Stevedoring Corporation, 128 Phil. 313, 318 (1967).

[23] Mindex Resources Development Corporation v. Morillo, 428 Phil. 934, 944 (2002).

[24] Co v. Court of Appeals, 353 Phil. 305, 313 (1998).

[25] Mindex Resources Development Corporation v. Morillo, supra citing Tolentino, CIVIL CODE OF THE PHILIPPINES, Vol. IV, 1991 ed., p. 126, citing Sian v. Inchausti & Co., 22 Phil. 152 (1912); Juan F. Nakpil & Sons v. Court of Appeals, 228 Phil. 564, 578 (1986). Cf. Metal Forming Corporation v. Office of the President, 317 Phil. 853, 859 (1995).

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[26] Id. citing Nakpil and Sons v. Court of Appeals, supra note 25, at 578.

[27] Supra note 24.

[28] Id. at 312-313.

[29]CIVIL CODE, Art. 1170.

[30]443 Phil. 856, 863 (2003) citing McKee v. Intermediate Appellate Court, 211 SCRA 517 (1992).

[31] Cruz v. Gangan, supra note 30, at 863.

[32] TSN, January 21, 1992, pp.17-18.

[33] Exhibit "1," Excerpt from the Police Blotter dated October 17, 1987 of the Parañaque Police Station, p. 121.

[34] Cruz v. Gangan, supra note 30, at 863 citing SANGCO, TORTS AND DAMAGES, Vol. 1, 1993 rev. ed. p. 5.

[35] Supra note 7.

[36] G.R. No. 71871, November 6, 1989, 179 SCRA 39.

[37] Supra note 30.

[38] Austria v. Court of Appeals, supra note 7, at 466-467.

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