

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. TRAVERSE DEVELOPMENT CORPORATION AND CENTRAL SURETY AND INSURANCE COMPANY, RESPONDENTS.

G.R. No. 169293. October 05, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari[1] of the September 30, 2004 Decision[2] and August 11, 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 65311, which affirmed the November 24, 1998 Decision[4] of the Regional Trial Court (RTC) of Quezon City, Branch 87, in Civil Case No. Q-37497, as modified by its February 1, 1999 Order.[5]

The facts are simple and straightforward.

The Development of the Philippines (DBP)-Tarlac Branch granted a "Real Estate Loan" of ₱910,000.00 to Traverse Development Corporation (Traverse) for the construction of its three-storey commercial building at Tañedo St., Tarlac City. To secure the payment of this loan, Traverse constituted a mortgage on the land on which the building was to be built on July 21, 1980.[6] Among the conditions imposed by DBP in the mortgage contract was Traverse's acquisition of an insurance coverage for an amount not less than the loan, to be endorsed in DBP's favor.[7]

From 1980 to 1981, Traverse submitted to DBP three policies in accordance with the insurance condition in the mortgage contract. The last of these three was FGU Policy No. 6246, in the amount of ₱1 Million, for the period of one year, from May 7, 1981 to May 7, 1982.[8]

On May 6, 1982, FGU Insurance Corporation (FGU) renewed Traverse's Fire Insurance Policy for another year, from May 7, 1982 to May 7, 1983, for the same amount of ₱1 Million, under Policy No. 61146.[9] However, as DBP had already transferred the building's insurance to Central Surety & Insurance Company (Central), for the same terms, under Fire Insurance Policy No. TAR 1056 (Policy No. TAR 1056), issued on May 7, 1982, it returned the FGU Policy to Traverse. [10]

On August 9, 1982, during the effectivity of Policy No. TAR 1056, a fire of undetermined origin razed and gutted Traverse's building. The following day, Traverse informed Central of the mishap and requested it to immediately conduct the necessary inspection, evaluation, and investigation.[11]

On September 7, 1982, Traverse submitted to Central written proof of the loss sustained by its building, together with its claim in the amount of ₱1 Million. On November 6, 1982, Central proposed to settle Traverse's claim on the basis of cost of repairs of the affected parts of the building for ₱230,748.00.[12] Believing that this was highly inequitable and unreasonable, Traverse denied such proposal.

Having failed to arrive at a settlement, Traverse, on February 28, 1983, filed a Complaint[13] before the RTC, against Central and DBP for payment of its claim and damages.

Traverse averred that it was obvious from the beginning that Central was unable or unwilling to fulfill its liability under Policy No. TAR 1056. Traverse alleged that due to the unjustifiable delay of Central to settle its claims, it was prevented from receiving rentals for its building, its loan with DBP had increased due to interest and penalties, and it had suffered actual damages. Traverse impleaded DBP as a co-defendant because of its alleged failure or refusal to convince Central to pay Traverse's claims, considering that it transferred Traverse's insurance to Central without Traverse's knowledge.[14]

In its Answer, DBP denied that Traverse had no knowledge of the transfer of its insurance to Central as evidenced by its payment of the premium, documentary stamp tax, and other charges for the new insurance policy. DBP also claimed that it was Traverse that transferred its insurance to Central to avoid delays in renewing its insurance, since FGU had no branch office in Tarlac.[15]

Central argued in its Answer that Traverse had no valid and sufficient cause of action because aside from violating material conditions in its policy, DBP, as the endorsee of the policy, was the real party-in-interest. Central also averred that Traverse had no one else to blame but itself for the ballooning interest of its loan and lack of rentals since it insisted on an exaggerated, unjustified, and unreasonable claim, considering that the building was not a total loss, as the building was only partially damaged.[16]

On November 24, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered as follows:

- (a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (P1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);
- (b) ordering defendant DBP to extinguish plaintiff's loan totally, including interest, penalties and charges;
- (c) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of P50,000.00;
- (d) ordering both defendants to pay jointly and severally the plaintiff, attorney's fees in the amount of P50,000.00, plus cost of litigation.[17]

The RTC held that "total loss" did not require that the building be annihilated and turned into rubble, as long as the property was destroyed to such an extent as to deprive it of the character in which it was insured. In holding Central liable for damages, interests, penalties, attorney's fees, and costs of suit, the RTC noted how Central had tried to evade Traverse's claims. It said that Traverse made no declarations as to the use of its building as it had been established that not only was its insurance policy transferred to Central without its knowledge, but that Policy No. TAR 1056 was copied verbatim from its FGU policy.[18]

The RTC adjudged DBP to be solidarily liable with Central for damages, attorney's fees, and costs of suit in view of its refusal or failure to pursue the claim against Central. The RTC said that as beneficiary-assignee of Policy No. TAR 1056, DBP should not have stopped at following-up its claim through letters and telegrams but should have either filed its own case against Central or joined Traverse as a co-plaintiff. The RTC took DBP's inaction as suggestive of its deliberate participation in the transfer of Traverse's existing insurance coverage from FGU to Central.[19]

On January 13, 1999, DBP filed a Motion for Reconsideration[20] based on the following grounds:

1. THE HONORABLE COURT ERRED IN ORDERING DEFENDANT DBP TO EXTINGUISH [TRAVERSE'S] LOAN TOTALLY INCLUDING INTEREST, PENALTIES AND CHARGES.

2. THE HONORABLE COURT ALSO ERRED IN ORDERING DEFENDANT DBP TO PAY [TRAVERSE] JOINTLY AND SEVERALLY THE ATTORNEY'S FEE AND COST OF LITIGATION.[21]

On February 1, 1999, the RTC partially granted DBP's motion by completely deleting paragraph (b) and modifying paragraph (c) of the disposition of its November 24, 1998 Decision. The dispositive portion of the RTC's decision in Civil Case No. Q-37497, as revised, reads:

(a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (P1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);

(b) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of P50,000.00;

(c) ordering both defendants to pay plaintiff jointly and severally attorney's fees in the amount of P50,000.00, plus cost of litigation.[22]

Both Central and DBP appealed the decision of the RTC to the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 65311.

On September 30, 2004, the Court of Appeals dismissed the appeal and affirmed the RTC.

On October 18, 2004, Central moved for the reconsideration of the Court of Appeals' Decision, alleging that it dealt in good faith with Traverse.[23]

On October 20, 2004, DBP filed its own Motion for Partial Reconsideration, seeking the rectification of the misquoted dispositive portion, which was from the November 24, 1998 Decision of the RTC, and the setting aside of the order making DBP solidarily liable with Central for the payment of attorney's fees and costs of suit.[24]

On August 11, 2005, the Court of Appeals resolved both motions for reconsideration, denying Central's as its arguments were but a rehash of its petition, and partially granting DBP's, in view of the RTC's February 1, 1999 Order.[25]

Undaunted, DBP, on September 27, 2005, filed a petition for review of its case before this Court. Pending the resolution of its petition, DBP then moved for this Court to Direct the Lower Court to Issue Writ of Partial Execution.

In seeking our review of its case, DBP assigns only one error, to wit:

THE COURT OF APPEALS ERRED IN HOLDING PETITIONER DBP SOLIDARILY LIABLE WITH RESPONDENT CENTRAL FOR ATTORNEY'S FEES IN THE AMOUNT OF P50,000.00 PLUS COST OF LITIGATION. [26]

DBP claims that it cannot be held solidarily liable with Central for the payment of attorney's fees without contravening Article 2208 of the Civil Code, which sanctions an award only when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. DBP argues that there is no legal justification to hold it liable for attorney's fees and cost of litigation as nowhere in the decision was it stated that Traverse was compelled to litigate because of DBP's act or omission. DBP alleges that Central's refusal to pay Traverse's claim could not be attributed to it especially since it exerted all efforts to collect from Central. It avers that filing a cross-claim would have been a mere surplusage and failure to file such cannot be considered as a basis for its liability. DBP further asseverates that the speculation that Traverse would have been able to easily collect from FGU had its insurance not been transferred to Central is not a basis for awarding attorney's fees since it was Traverse itself that chose to transfer its insurance to Central.[27]

This Court's Ruling

The resolution of this case hinges upon the lone issue of whether or not DBP can be held solidarily liable with Central for the payment of attorney's fees and cost of litigation, in light of the fact that it was the one that facilitated the transfer of Traverse's insurance coverage from FGU to Central.

Both the RTC and the Court of Appeals held DBP liable for attorney's fees and costs of suit because said courts believed that DBP should have been more aggressive in pursuing its claim against Central.

In the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code,[28] to wit:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Even if it were true that DBP had a hand in the transfer of Traverse's insurance coverage to Central, such act is not sufficient to hold it solidarily liable with Central for the payment of attorney's fees and cost of litigation under the above provision of the Civil Code.

Records show that during the testimony of the former insurance examiner of DBP-Tarlac, Victoria Punzalan (Punzalan), she claimed that she had repeatedly reminded Mrs. Lourdes Roxas, Traverse's President, of the impending expiration of Traverse's insurance coverage with FGU.[29] Mrs. Roxas, however replied that her son would not be able to attend to it as he was out of the country at that time. Subsequently, Atty. Ruperto Zamora of Central called up Punzalan, upon the supposed instruction of Mrs. Roxas, to draw up Traverse's insurance coverage.[30] DBP only came to know that Traverse had already renewed its insurance policy with FGU on May 6, 1981, after Central had already drawn up Policy No. TAR 1056.[31]

We thus find that DBP could not be blamed for facilitating such transfer in light of the previous delays in Traverse's submission of its insurance policy. It is worthy to note that Policy No. TAR 1056 was drawn on May 7,

1986, the date that Traverse's previous FGU policy was set to expire. Moreover, Central was not only one of DBP's accredited insurance companies, but it also had a local branch office, which made transactions with it faster and easier.

This Court also cannot sustain the insinuation that DBP's lax attitude in pursuing its claim against Central was tantamount to bad faith as to make it liable for attorney's fees and costs of suit. Even a resort to the principle of equity will not justify making DBP liable.

The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award.[32] As we held in *ABS-CBN Broadcasting Corporation v. Court of Appeals*[33]:

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. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[34] (Emphasis supplied.)

It should be remembered that Traverse's insurance policy was assigned to DBP. While it is true that DBP still had the real estate mortgage to ensure the payment of Traverse's loan, it would be in its favor to facilitate Central's payment on Policy No. TAR 1056 rather than go through the process of foreclosing Traverse's lot or having to demand payment again, albeit from Traverse this time. Moreover, Traverse's own evidence shows that DBP had tried its best to facilitate and coordinate meetings between Traverse and Central. DBP Tarlac even suggested to its main office to have Central blacklisted from its roster of accredited insurance companies as an effect of its handling of the Traverse fire insurance claim.[35]

It was not DBP's act of facilitating the transfer of Traverse's insurance policy from FGU to Central that compelled Traverse to litigate its claims, but rather Central's persistent refusal to pay such claims. Thus, only Central should be held liable for the payment of attorney's fees and costs of suit.

In view of the foregoing, the Motion filed by DBP to direct the lower court to issue a writ of partial execution has become moot.

WHEREFORE, this Court GRANTS the petition and MODIFIES the September 30, 2004 Decision as well as the August 11, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 65311 by holding that petitioner Development Bank of the Philippines is not liable for the payment of attorney's fees and costs of suit in said case.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 8-18; penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring.

[3] Id. at 20-22.

[4] CA rollo, pp. 127-143.

[5] Records, Vol. I, p. 542.

- [6] Id. at 277-278.
- [7] Id. at 280.
- [8] Id. at 297-299.
- [9] Records, Vol. III, p. 26.
- [10] Id. at 1.
- [11] Id. at 4.
- [12] Id. at 17.
- [13] Records, Vol. 1, pp. 1-5.
- [14] Id. at 2.
- [15] Id. at 37.
- [16] Id. at 45-47.
- [17] CA rollo, pp. 142-143.
- [18] Id. at 137-140.
- [19] Id. at 140-142.
- [20] Records, Vol. I, pp. 520-524.
- [21] Id. at 520.
- [22] Id. at 542.
- [23] Id. at 283-291.
- [24] Id. at 293-302.
- [25] Rollo, pp. 20-22.
- [26] Id. at 32.
- [27] Id. at 32-37.
- [28] ABS-CBN Broadcasting Corporation v. Court of Appeals, 361 Phil. 499, 528 (1999).
- [29] TSN, March 9, 1989, p. 10; records, Vol. II, p. 313.
- [30] Id. at 11; records, Vol. I, p. 492.
- [31] Id. at 15; id. at 497.
- [32] Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.
- [33] Supra note 28.
- [34] Id. at 529.
- [35] CA rollo, p. 141.

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