

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
DEPARTMENT OF HEALTH REGIONAL HEALTH OFFICE NO. 3,
PETITIONER, VS. DONATILLA R. BAUTISTA, DOING BUSINESS UNDER
THE NAME AND STYLE...**

G.R. NO. 169801. September 11, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Court of Appeals' Decision[1] in CA-G.R. CV No. 69674 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pampanga, Branch 43. The RTC Decision dismissed petitioner's action for damages against respondents.

The following factual antecedents are matters of record.

Herein petitioner Department of Health (DOH), represented by its then Regional Director, Dr. Ricardo T. Trinidad, engaged the services of Rescue Security Services (Rescue Security), owned by respondent Donatilla Bautista, to guard the DOH premises against theft, pilferage, robbery, arson and other unlawful acts of strangers. On 21 December 1995, Dr. Trinidad and Elena Palma, the Branch Manager of Rescue Security, signed a Contract of Security Services[3] effective from 1 January 1996 to 31 December 1996.[4]

In the morning of 8 April 1996, petitioner's personnel discovered that the ceiling of Storeroom No. 1 was forcibly detached. After the matter was reported to the police authorities, they conducted an inventory and discovered that medicines worth P4,244,385.32 were missing.[5] The report of the Criminal Investigation Group of the Philippine National Police categorically stated that a robbery occurred inside the storeroom and pegged the loss at P6,369,837.04.[6]

Petitioner repeatedly notified Rescue Security about the loss. The last of such notification was on 5 July 1996 through a letter sent by Dr. Trinidad.[7] On 9 August 1996, petitioner sent Rescue Security a notice of termination of the contract of services. Rescue Security refused to pay the total amount of loss, prompting petitioner to institute an action for damages against respondents based on Rescue Security's contractual undertaking that it would guarantee the payment of any loss or damage to petitioner's property. The complaint was docketed as Civil Case No. 11099 and raffled to the RTC of Pampanga, Branch 43.

Respondent Bautista did not appear despite proper service of summons on her. Only respondent Palma filed an answer[8] and participated in the proceedings.

During trial, respondent Palma denied the loss of the medicines and further alleged that they were never placed under the custody of Rescue Security or any of its security guards assigned at the DOH premises. Respondent Palma also pointed out that no notification was made within 48 hours from discovery of the loss in violation of Paragraph 6 of the Contract of Security Services.[9]

On 28 April 2000, the RTC rendered a Decision^[10] dismissing the complaint. While the trial court found that the medicines worth P4,220,293.35 were indeed lost, it ruled that petitioners evidence failed to establish that the medicines had already been placed inside the storeroom when the robbery took place. The trial court found that there was no proof that the medicines had been placed under the control and protection of Rescue Security since the latter was not furnished with an inventory of the medicines. The trial court also based the dismissal of petitioners complaint on its conclusion that petitioner failed to notify Rescue Security of the loss within 48 hours from its occurrence, although the RTC decision did not elaborate on this finding.

The dispositive portion of the RTC Decision reads:

WHEREFORE, all the foregoing considered, the court hereby renders its decision in favor of the defendants and against the plaintiff.

In view hereof, the prayers for the payment to the plaintiff by the defendant of actual and exemplary damages and costs of suit are DENIED for lack of merit.

Likewise, the prayers of defendant Palma for award of moral, attorney's and appearance fees are denied for lack of merit.

Costs against the plaintiff.

SO ORDERED.^[11]

From the RTC Decision, petitioner elevated the matter to the Court of Appeals. Petitioner questioned the trial court's ruling that the absence of inventory negated its claim that the medicines had been placed under the custody of Rescue Security. Petitioner also disputed the trial court's finding that the DOH failed to report the loss within 48 hours from the incident.^[12]

On 26 September 2005, the Court of Appeals rendered the assailed Decision,^[13] affirming the RTC Decision with respect to its conclusion that petitioner failed to notify respondents about the loss within 48 hours from its occurrence. As regards the issue of whether an inventory of the medicines was a requirement before they could be considered placed under the control or custody of Rescue Security, the Court of Appeals differed from the RTC's opinion. It concluded that the petitioner and Rescue Security were in agreement that as long as the medicines were placed within the DOH premises, "they were already considered to have been placed under the control of the security guards and any loss that may occur shall be the responsibility of the latter."^[14]

Just the same, the Court of Appeals affirmed the dismissal of petitioners complaint because of petitioner's failure to notify Rescue Security of the fact of loss within 48 hours from the incident.

Hence, the instant petition which raises the sole issue of whether the Court of Appeals was correct in concluding that petitioner failed to comply with the 48-hour notice requirement.

The Court of Appeals acknowledged that the RTC Decision did not elaborate on its finding that petitioner failed to comply with the required notification and that the testimonies of witnesses on this factual issue were conflicting. Thus, the Court of Appeals was constrained to uphold the trial court's finding that there was no notification about the loss.^[15] Furthermore, the Court of Appeals deduced from the contents of the 5 July 1996 letter sent by Dr. Trinidad that petitioner had notified the security guard only after two weeks from the incident.

On the other hand, petitioner insists that based on the records of the case, Rescue Security, as well as its security guards posted at the DOH premises and its personnel officer, had actual notice of the incident on the day the loss was discovered.

At the outset, it should be noted that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Rules of Court is limited to reviewing only errors of law. This Court is not a trier of facts. It is a settled doctrine that findings of fact of the Court of Appeals are generally binding and conclusive on this Court. Such factual findings

shall not be disturbed, unless: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[16]

An examination of the decisions of the courts below warrants the review of their common finding that Rescue Security was not notified within 48 hours about the loss of the medicines. The RTC Decision did not cite the specific evidence on which it relied in concluding that petitioner failed to immediately notify Rescue Security. The Court of Appeals overlooked relevant testimonial evidence, which, if properly appreciated, would justify a different conclusion.

As pointed out by petitioner, Rescue Security's own personnel officer, Oliver Liangco, testified that in the morning of 8 April 1996, he went to the DOH premises after he received at work a phone call from a certain Lourdes Macabulos, Planning Officer of DOH-Region 3. According to Liangco, Macabulos informed him about the incident, prompting him to proceed to the DOH premises and make an ocular inspection of the storeroom. Furthermore, Liangco testified that Macabulos accompanied him when he inspected the storeroom and even verbally conveyed to him that the drugs inside the storeroom were missing.[17] This fact alone is sufficient proof that Rescue Security had been informed of the loss through its personnel, Oliver Liangco. Under Rule 130, Section 26 of the Rules on Evidence, the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. This rule is based upon the notion that no man would make any declaration against himself, unless it is true.[18]

On cross-examination, respondent Palma likewise testified that Liangco reported to her about the inspection he had conducted on the DOH premises on the day of the alleged loss.[19] Her testimony corroborated Liangco's testimony that on the day of the discovery of the loss, Liangco was summoned to the DOH premises where the reported loss took place.

The Court of Appeals sweepingly brushed aside Liangco's testimony and was persuaded by Macabulos' rebuttal testimony denying that she had spoken to Liangco about the incident. The rule is that the positive and categorical assertions of witnesses generally prevail over bare denials. Such accordance of greater probative value to evidence that is positive in nature than that which is negative in character is a time-honored principle.[20] Denial is a self-serving negative evidence that cannot be given greater weight than the declaration of credible witnesses who testified on affirmative matters.[21] Accordingly, Liangco's testimony that he was informed about the incident must be upheld.

Now, does the notice to Liangco sufficiently comply with the requirement under the Contract of Security Services?

Paragraph 6 of the Contract of Security Services provides:

6. The AGENCY shall guarantee payment of any loss or damage to the CLIENT's property, provided such property is placed under the control of the AGENCY's security guards during their tour of duties and the loss or damage is reported to the AGENCY within 48 hours from occurrence. Should the AGENCY be made to pay, it subrogates the right of the CLIENT against the party or parties responsible for such loss or damage. However, when such loss or damage is caused by force majeure, fortuitous events, or factors which do not involve negligence or carelessness on the part of the AGENCY's security guards, the agency shall not be held liable. (Emphasis supplied)[22]

It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt on the intention of the contracting parties, the literal meaning of its stipulation shall control.[23] When the language of the contract is explicit, as in the case at bar, leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain import.[24]

Unfortunately, the Contract of Security Services does not define the requisite notice. Neither does it specify the manner of reporting the loss, whether it should be written or verbal, or the employee responsible should convey or receive the notice. The contract plainly states that the loss or damage should be reported to Rescue Security within 48 hours from its occurrence as a condition for the payment of the loss of property.

Thus, the reportorial requirement should be construed in its plain and literal import. The Court cannot further qualify the requisite or read into it any other meaning not expressed in the contract. Accordingly, as long as Rescue Security is informed in any manner whatsoever about the loss of the property, the requisite notice should be deemed satisfied. In the case at bar, Liangco received the information, not only once but twice, in his capacity as an officer of Rescue Security. The notice to Liangco was notice to Rescue Security.

Be that as it may, Rescue Security countered by way of defense that it should not be made liable for the loss because the loss was not caused by its fault or negligence.[25] The trial court agreed, stating that the evidence failed to establish that the loss was caused by the fault or negligence of Rescue Security or of its security guards.[26]

While it is true that the question of negligence on the part of Rescue Security was never made an issue either before the Court of Appeals or in this petition, nonetheless this Court deems it proper to resolve the same to arrive at a complete determination of this case. After all, it would be far-fetched to expect Rescue Security to raise the matter of negligence as an issue since it was itself the appellee before the Court of Appeals and the trial court ruled that negligence could not be pinned on Rescue Security in the absence of evidence on the aspect.

Anyhow, the issue of negligence is related to the issue of Rescue Security's liability for the loss of the medicines because the absence thereof is one of the exculpatory circumstances expressly recognized in Paragraph 6[27] of the Contract of Security Services. Indeed, this Court has the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which depends the determination of the questions raised by the errors properly assigned.[28] In the instant case, the determination of the issue of whether Rescue Security may be held liable under the contract will depend upon the Courts finding of negligence on the part of Rescue Security's security guards.

In civil cases, the party bearing the burden of proof must establish his case by preponderance of evidence. Preponderance of evidence means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[29]

From a reading of the Contract of Security Services,[30] it can be fairly deduced that the fact of negligence on the part of Rescue Security cannot be presumed in the event of loss. Thus, in order to impute liability to Rescue Security in case of loss, it is incumbent upon petitioner to prove that Rescue Security and or its security guards

were

guilty of negligence in performing the security services it undertook to provide under the contract which include shielding the DOH premises from robbery and other unlawful acts.

After a painstaking review of the records of the case, the Court finds that petitioner failed to present preponderant evidence showing that the negligence or carelessness of the security guards was the proximate cause of the loss of the medicines. A perusal of their testimonies reveals that the security guards posted at petitioners premises during the period that the robbery took place had performed their duties in the manner reasonably expected of them under the circumstances. Petitioner failed to present proof to rebut this evidence. It is possible that there were security lapses during the long holidays on the occasion of which the loss was thought to have occurred. However, absent any evidence showing a direct link between the loss and the conduct of the security guards, the Court cannot make Rescue Security answerable for the loss.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 69674 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1]Rollo, pp. 8-24. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Elvi John S. Asuncion, Chairperson, Fifteenth Division, and Mariano C. Del Castillo.

[2]Id. at 75-79.

[3]Records, pp. 6-9.

[4]Id. at 1-2; Complaint dated 7 March 2007.

[5]Id. at 2-3.

[6]Folder of Exhibits; Exhibits "D" and "D-1;" Memorandum of the Criminal Investigation Group to the Regional Officer, 3rd CIG Regional Office regarding the Re-alleged Robbery break at DOH Regional Health Office III, San Nicolas, San Fernando, Pampanga dated 21 February 1997.

[7]Folder of Exhibits; Exhibit "K."

[8]Records, pp. 17-22.

[9]Rollo, p. 71; Paragraph 6 reads: The AGENCY shall guarantee payment of any loss or damage to the CLIENT's property, provided such property is placed under the control of the AGENCY's security guards during their tour of duties and the loss or damage is reported to the AGENCY within 48 hours from occurrence. Should the AGENCY be made to pay, it subrogates the right of the CLIENT against the party or parties responsible for such loss or damage. However, when such loss or damage is caused by force m[a]jeure, fortuitous events, or factors which do not involve negligence or carelessness on the part of the AGENCY's security guards, the agency shall not be held liable. (Emphasis supplied)

[10]Supra note 2.

[11]Rollo, pp. 78-79.

[12]CA rollo, p. 98.

[13]Supra note 1.

[14]Id. at 62.

[15]Id. at 67.

[16]Baricuatro v. Court of Appeals, 382 Phil. 15, 24 (2000).

[17]TSN, December 17, 1998, pp. 6-16. The relevant portion of the testimony we reproduce below:

Atty. Liangco: Now, on April 8, 1996, were already employed with Rescue Security Services?

Witness: Yes, sir.

x x x x

Atty. Liangco: Now, on April 8, 1996, did you report for work at the Rescue Security Services office?

Witness: Yes, sir.

x x x x

Atty. Liangco: What time did you report?

Witness: Seven in the morning, sir.

Atty. Liangco: While you were at your office, do you remember having received any information regarding the loss of certain drugs and medicines of one of your clients?

Witness: During that time, sir, I recall that there was something that Miss Lourdes Macabulos called.

Atty. Liangco: Do you know to whom this Miss Lourdes Macabulos spoke over the telephone?

Atty. Liangco: With whom?

Witness:& With me, sir.

x x x x

Atty. Liangco: Now, after you received that call what did you do?

Witness: After that call, sir, I went to the DOH, Regional Office and I directly went [sic] to Miss Macabulos.

Atty Liangco: What time[,] more or less[,] did you receive that call?

Witness: More or less, I think around 10:00 to 11:00 o'clock, sir.

Atty. Liangco: Of April 8, 1996?

Witness: Yes, sir. In the morning.

x x x x

Atty. Liangco: Now, when you reached the office of the DOH, Regional Office, No. 3 at San Nicholas, San Fernando, Pampanga, what did you do?

Witness: At first, sir, I asked our Security Guard what happened, and after that I went already [sic] to Miss Macabulos inside the office supply room, sir.

Atty. Llangco: Now when you said supply room, you are referring to the supply room of DOH?

Witness: Yes, sir.

Atty. Liangco: What happened when you went to Miss Macabulos in the supply room?

Witness: During that time, sir, when I arrived at the supply room [sic] Miss Macabulos told me that there was something that happened [sic] in the supply room. And I investigated the report, sir, including the doors, the windows and ceilings and I found that there were no traces of forcible entry.

x x x x

Atty. Liangco: Now, what did you find inside the stockroom?&

Witness: Mrs. Macabulos told me that there were missing [sic] and she pointed the boxes where they were located.

x x x x

Atty. Liangco: What else did Miss Macabulos tell you while you were inside the stock room?&

Witness: She said that the loss [sic] drugs and medicines in those boxes.

[18] Bon v. People, 419 SCRA 101, 111.

[19] TSN, March 30, 1999, pp. 66-68. The portion of the testimony is reproduced below:

Atty. Romualdo: Oliver Liangco is the budget officer according to Daniel Rivera?

Witness: Yes, sir.

Atty. Romualdo: Did he not make any report with respect to the investigation he conducted?

Witness: He just told me that there were no force entry [sic] and as per Macabulos, they entered the [s]upply room without any damage[;] the ceiling, the windows, the doors and the padlocks.

Atty. Romualdo: Do you remember when did Oliver Liangco come in the premises of the plaintiff? .

Witness: I cannot remember, sir

Atty. Romualdo: According to him, it was on April 8, [that] he went because Miss Macabulos phoned him, and he phoned you only verbally?

Witness: Yes, sir.

Atty. Romualdo: Not in writing?

Witness: No, sir, he just told me there was no force entry [sic] and when he entered the room according to him, he did not see any damage on the windows as well as on the ceiling, how could it be that there was lost [sic].

[20] People of the Philippines v. Patanayan, Jr., 434 Phil. 303, 326 (2002).

[21] Tecson v. Sandiganbayan, 376 Phil. 191, 202-203 (1999).

[22] Supra note 9.

[23] German Marine Agencies, Inc. v. NLRC, 403 Phil. 572, 588-589 (2001).

[24]Id. at 589.

[25] Records, p. 18.

[26] Id. at 302.

[27] Supra note 9.

[28] Republic of the Philippines v. COCOFED, 423 Phil. 735 (2001).

[29] Lee v. Court of Appeals, 426 Phil. 290, 304 (2002).

[30] Rollo, p. 71. x x x Paragraph 7 reads in part: The AGENCY'S performance bond shall stipulate that it shall also answer and be liable for damage or loss incurred by the CLIENT attributable directly or indirectly to the negligence or misbehaviour of the security guards of the AGENCY;

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