

DURBAN APARTMENTS CORPORATION, DOING BUSINESS UNDER THE NAME AND STYLE OF CITY GARDEN HOTEL, PETITIONER, VS. PIONEER INSURANCE AND SURETY CORPORATION, RESPONDENT.

G.R. No. 179419. January 12, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision [1] of the Court of Appeals (CA) in CA-G.R. CV No. 86869, which affirmed the decision [2] of the Regional Trial Court (RTC), Branch 66, Makati City, in Civil Case No. 03-857, holding petitioner Durban Apartments Corporation solely liable to respondent Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's (See's) vehicle.

The facts, as found by the CA, are simple.

On July 22, 2003, [respondent] Pioneer Insurance and Surety Corporation x x x, by right of subrogation, filed [with the RTC of Makati City] a Complaint for Recovery of Damages against [petitioner] Durban Apartments Corporation, doing business under the name and style of City Garden Hotel, and [defendant before the RTC] Vicente Justimbaste x x x. [Respondent averred] that: it is the insurer for loss and damage of Jeffrey S. See's [the insured's] 2001 Suzuki Grand Vitara x x x with Plate No. XBH-510 under Policy No. MC-CV-HO-01-0003846-00-D in the amount of P1,175,000.00; on April 30, 2002, See arrived and checked in at the City Garden Hotel in Makati corner Kalayaan Avenues, Makati City before midnight, and its parking attendant, defendant x x x Justimbaste got the key to said Vitara from See to park it [O]n May 1, 2002, at about 1:00 o'clock in the morning, See was awakened in his room by [a] telephone call from the Hotel Chief Security Officer who informed him that his Vitara was carnaped while it was parked unattended at the parking area of Equitable PCI Bank along Makati Avenue between the hours of 12:00 [a.m.] and 1:00 [a.m.]; See went to see the Hotel Chief Security Officer, thereafter reported the incident to the Operations Division of the Makati City Police Anti-Carnapping Unit, and a flash alarm was issued; the Makati City Police Anti-Carnapping Unit investigated Hotel Security Officer, Ernesto T. Horlador, Jr. x x x and defendant x x x Justimbaste; See gave his Sinumpaang Salaysay to the police investigator, and filed a Complaint Sheet with the PNP Traffic Management Group in Camp Crame, Quezon City; the Vitara has not yet been recovered since July 23, 2002 as evidenced by a Certification of Non- Recovery issued by the PNP TMG; it paid the P1,163,250.00 money claim of See and mortgagee ABN AMRO Savings Bank, Inc. as indemnity for the loss of the Vitara; the Vitara was lost due to the negligence of [petitioner] Durban Apartments and [defendant] Justimbaste because it was discovered during the investigation that this was the second time that a similar incident of carnaping happened in the valet parking service of [petitioner] Durban Apartments and no necessary precautions were taken to prevent its repetition; [petitioner] Durban Apartments was wanting in due diligence in the selection and supervision of its employees particularly defendant x x x Justimbaste; and defendant x x x Justimbaste and [petitioner] Durban Apartments failed and refused to pay its valid, just, and lawful claim despite written demands.

Upon service of Summons, [petitioner] Durban Apartments and [defendant] Justimbaste filed their Answer with Compulsory Counterclaim alleging that: See did not check in at its hotel, on the contrary, he was a guest

of a certain Ching Montero x x x; defendant x x x Justimbaste did not get the ignition key of See's Vitara, on the contrary, it was See who requested a parking attendant to park the Vitara at any available parking space, and it was parked at the Equitable Bank parking area, which was within See's view, while he and Montero were waiting in front of the hotel; they made a written denial of the demand of [respondent] Pioneer Insurance for want of legal basis; valet parking services are provided by the hotel for the convenience of its customers looking for a parking space near the hotel premises; it is a special privilege that it gave to Montero and See; it does not include responsibility for any losses or damages to motor vehicles and its accessories in the parking area; and the same holds true even if it was See himself who parked his Vitara within the premises of the hotel as evidenced by the valet parking customer's claim stub issued to him; the carnapper was able to open the Vitara without using the key given earlier to the parking attendant and subsequently turned over to See after the Vitara was stolen; defendant x x x Justimbaste saw the Vitara speeding away from the place where it was parked; he tried to run after it, and blocked its possible path but to no avail; and See was duly and immediately informed of the carnapping of his Vitara; the matter was reported to the nearest police precinct; and defendant x x x Justimbaste, and Horlador submitted themselves to police investigation.

During the pre-trial conference on November 28, 2003, counsel for [respondent] Pioneer Insurance was present. Atty. Monina Lee x x x, counsel of record of [petitioner] Durban Apartments and Justimbaste was absent, instead, a certain Atty. Nestor Mejia appeared for [petitioner] Durban Apartments and Justimbaste, but did not file their pre-trial brief.

On November 5, 2004, the lower court granted the motion of [respondent] Pioneer Insurance, despite the opposition of [petitioner] Durban Apartments and Justimbaste, and allowed [respondent] Pioneer Insurance to present its evidence ex parte before the Branch Clerk of Court.

See testified that: on April 30, 2002, at about 11:30 in the evening, he drove his Vitara and stopped in front of City Garden Hotel in Makati Avenue, Makati City; a parking attendant, whom he had later known to be defendant x x x Justimbaste, approached and asked for his ignition key, told him that the latter would park the Vitara for him in front of the hotel, and issued him a valet parking customer's claim stub; he and Montero, thereafter, checked in at the said hotel; on May 1, 2002, at around 1:00 in the morning, the Hotel Security Officer whom he later knew to be Horlador called his attention to the fact that his Vitara was carnapped while it was parked at the parking lot of Equitable PCI Bank which is in front of the hotel; his Vitara was insured with [respondent] Pioneer Insurance; he together with Horlador and defendant x x x Justimbaste went to Precinct 19 of the Makati City Police to report the carnapping incident, and a police officer came accompanied them to the Anti-Carnapping Unit of the said station for investigation, taking of their sworn statements, and flashing of a voice alarm; he likewise reported the said incident in PNP TMG in Camp Crame where another alarm was issued; he filed his claim with [respondent] Pioneer Insurance, and a representative of the latter, who is also an adjuster of Vesper Insurance Adjusters-Appraisers [Vesper], investigated the incident; and [respondent] Pioneer Insurance required him to sign a Release of Claim and Subrogation Receipt, and finally paid him the sum of P1,163,250.00 for his claim.

Ricardo F. Red testified that: he is a claims evaluator of [petitioner] Pioneer Insurance tasked, among others, with the receipt of claims and documents from the insured, investigation of the said claim, inspection of damages, taking of pictures of insured unit, and monitoring of the processing of the claim until its payment; he monitored the processing of See's claim when the latter reported the incident to [respondent] Pioneer Insurance; [respondent] Pioneer Insurance assigned the case to Vesper who verified See's report, conducted an investigation, obtained the necessary documents for the processing of the claim, and tendered a settlement check to See; they evaluated the case upon receipt of the subrogation documents and the adjuster's report, and eventually recommended for its settlement for the sum of P1,163,250.00 which was accepted by See; the matter was referred and forwarded to their counsel, R.B. Sarajan & Associates, who prepared and sent demand letters to [petitioner] Durban Apartments and [defendant] Justimbaste, who did not pay [respondent] Pioneer Insurance notwithstanding their receipt of the demand letters; and the services of R.B. Sarajan & Associates

were engaged, for P100,000.00 as attorney's fees plus P3,000.00 per court appearance, to prosecute the claims of [respondent] Pioneer Insurance against [petitioner] Durban Apartments and Justimbaste before the lower court.

Ferdinand Cacnio testified that: he is an adjuster of Vesper; [respondent] Pioneer Insurance assigned to Vesper the investigation of See's case, and he was the one actually assigned to investigate it; he conducted his investigation of the matter by interviewing See, going to the City Garden Hotel, required subrogation documents from See, and verified the authenticity of the same; he learned that it is the standard procedure of the said hotel as regards its valet parking service to assist their guests as soon as they get to the lobby entrance, park the cars for their guests, and place the ignition keys in their safety key box; considering that the hotel has only twelve (12) available parking slots, it has an agreement with Equitable PCI Bank permitting the hotel to use the parking space of the bank at night; he also learned that a Hyundai Starex van was carnapped at the said place barely a month before the occurrence of this incident because Liberty Insurance assigned the said incident to Vespers, and Horlador and defendant x x x Justimbaste admitted the occurrence of the same in their sworn statements before the Anti-Carnapping Unit of the Makati City Police; upon verification with the PNP TMG [Unit] in Camp Crame, he learned that See's Vitara has not yet been recovered; upon evaluation, Vesper recommended to [respondent] Pioneer Insurance to settle See's claim for P1,045,750.00; See contested the recommendation of Vesper by reasoning out that the 10% depreciation should not be applied in this case considering the fact that the Vitara was used for barely eight (8) months prior to its loss; and [respondent] Pioneer Insurance acceded to See's contention, tendered the sum of P1,163,250.00 as settlement, the former accepted it, and signed a release of claim and subrogation receipt.

The lower court denied the Motion to Admit Pre-Trial Brief and Motion for Reconsideration filed by [petitioner] Durban Apartments and Justimbaste in its Orders dated May 4, 2005 and October 20, 2005, respectively, for being devoid of merit. [3]

Thereafter, on January 27, 2006, the RTC rendered a decision, disposing, as follows:

WHEREFORE, judgment is hereby rendered ordering [petitioner Durban Apartments Corporation] to pay [respondent Pioneer Insurance and Surety Corporation] the sum of P1,163,250.00 with legal interest thereon from July 22, 2003 until the obligation is fully paid and attorney's fees and litigation expenses amounting to P120,000.00.

SO ORDERED. [4]

On appeal, the appellate court affirmed the decision of the trial court, viz.:

WHEREFORE, premises considered, the Decision dated January 27, 2006 of the RTC, Branch 66, Makati City in Civil Case No. 03-857 is hereby AFFIRMED insofar as it holds [petitioner] Durban Apartments Corporation solely liable to [respondent] Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's Suzuki Grand Vitara.

SO ORDERED. [5]

Hence, this recourse by petitioner.

The issues for our resolution are:

1. Whether the lower courts erred in declaring petitioner as in default for failure to appear at the pre-trial conference and to file a pre-trial brief;
2. Corollary thereto, whether the trial court correctly allowed respondent to present evidence ex-parte;
3. Whether petitioner is liable to respondent for attorney's fees in the amount of P120,000.00; and

4. Ultimately, whether petitioner is liable to respondent for the loss of See's vehicle.

The petition must fail.

We are in complete accord with the common ruling of the lower courts that petitioner was in default for failure to appear at the pre-trial conference and to file a pre-trial brief, and thus, correctly allowed respondent to present evidence ex-parte. Likewise, the lower courts did not err in holding petitioner liable for the loss of See's vehicle.

Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. [6] A review of such findings by this Court is not warranted except upon a showing of highly meritorious circumstances, such as: (1) when the findings of a trial court are grounded entirely on speculation, surmises, or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. [7] None of the foregoing exceptions permitting a reversal of the assailed decision exists in this instance.

Petitioner urges us, however, that "strong [and] compelling reason[s]" such as the prevention of miscarriage of justice warrant a suspension of the rules and excuse its and its counsel's non-appearance during the pre-trial conference and their failure to file a pre-trial brief.

We are not persuaded.

Rule 18 of the Rules of Court leaves no room for equivocation; appearance of parties and their counsel at the pre-trial conference, along with the filing of a corresponding pre-trial brief, is mandatory, nay, their duty. Thus, Section 4 and Section 6 thereof provide:

SEC. 4. Appearance of parties.-It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.

SEC. 6. Pre-trial brief.-The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Contrary to the foregoing rules, petitioner and its counsel of record were not present at the scheduled pre-trial conference. Worse, they did not file a pre-trial brief. Their non-appearance cannot be excused as Section 4, in relation to Section 6, allows only two exceptions: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.

Petitioner is adamant and harps on the fact that November 28, 2003 was merely the first scheduled date for the pre-trial conference, and a certain Atty. Mejia appeared on its behalf. However, its assertion is belied by its own admission that, on said date, this Atty. Mejia "did not have in his possession the Special Power of Attorney issued

by petitioner's Board of Directors."

As pointed out by the CA, petitioner, through Atty. Lee, received the notice of pre-trial on October 27, 2003, thirty-two (32) days prior to the scheduled conference. In that span of time, Atty. Lee, who was charged with the duty of notifying petitioner of the scheduled pre-trial conference, [8] petitioner, and Atty. Mejia should have discussed which lawyer would appear at the pre-trial conference with petitioner, armed with the appropriate authority therefor. Sadly, petitioner failed to comply with not just one rule; it also did not proffer a reason why it likewise failed to file a pre-trial brief. In all, petitioner has not shown any persuasive reason why it should be exempt from abiding by the rules.

The appearance of Atty. Mejia at the pre-trial conference, without a pre-trial brief and with only his bare allegation that he is counsel for petitioner, was correctly rejected by the trial court. Accordingly, the trial court, as affirmed by the appellate court, did not err in allowing respondent to present evidence ex-parte.

Former Chief Justice Andres R. Narvasa's words continue to resonate, thus:

Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suited the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

x x x x

Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference (he) may be non-suited or considered as in default." The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial. And in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative of the lawyer to have "special authority" to make such substantive agreements as only the client otherwise has capacity to make. That "special authority" should ordinarily be in writing or at the very least be "duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative) himself." Without that special authority, the lawyer or representative cannot be deemed capacitated to appear in place of the party; hence, it will be considered that the latter has failed to put in an appearance at all, and he [must] therefore "be non-suited or considered as in default," notwithstanding his lawyer's or delegate's presence. [9]

We are not unmindful that defendant's (petitioner's) preclusion from presenting evidence during trial does not automatically result in a judgment in favor of plaintiff (respondent). The plaintiff must still substantiate the allegations in its complaint. [10] Otherwise, it would be inutile to continue with the plaintiff's presentation of evidence each time the defendant is declared in default.

In this case, respondent substantiated the allegations in its complaint, i.e., a contract of necessary deposit existed between the insured See and petitioner. On this score, we find no error in the following disquisition of the appellate court:

[The] records also reveal that upon arrival at the City Garden Hotel, See gave notice to the doorman and

parking attendant of the said hotel, x x x Justimbaste, about his Vitara when he entrusted its ignition key to the latter. x x x Justimbaste issued a valet parking customer claim stub to See, parked the Vitara at the Equitable PCI Bank parking area, and placed the ignition key inside a safety key box while See proceeded to the hotel lobby to check in. The Equitable PCI Bank parking area became an annex of City Garden Hotel when the management of the said bank allowed the parking of the vehicles of hotel guests thereat in the evening after banking hours. [11]

Article 1962, in relation to Article 1998, of the Civil Code defines a contract of deposit and a necessary deposit made by persons in hotels or inns:

Art. 1962. A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract.

Art. 1998. The deposit of effects made by travelers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.

Plainly, from the facts found by the lower courts, the insured See deposited his vehicle for safekeeping with petitioner, through the latter's employee, Justimbaste. In turn, Justimbaste issued a claim stub to See. Thus, the contract of deposit was perfected from See's delivery, when he handed over to Justimbaste the keys to his vehicle, which Justimbaste received with the obligation of safely keeping and returning it. Ultimately, petitioner is liable for the loss of See's vehicle.

Lastly, petitioner assails the lower courts' award of attorney's fees to respondent in the amount of P120,000.00. Petitioner claims that the award is not substantiated by the evidence on record.

We disagree.

While it is a sound policy not to set a premium on the right to litigate, [12] we find that respondent is entitled to reasonable attorney's fees. Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect its interest, [13] or when the court deems it just and equitable. [14] In this case, petitioner refused to answer for the loss of See's vehicle, which was deposited with it for safekeeping. This refusal constrained respondent, the insurer of See, and subrogated to the latter's right, to litigate and incur expenses. However, we reduce the award of P120,000.00 to P60,000.00 in view of the simplicity of the issues involved in this case.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 86869 is AFFIRMED with the MODIFICATION that the award of attorney's fees is reduced to P60,000.00. Costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring; rollo, pp. 93-109.

[2] Penned by Pairing Judge Rommel O. Baybay; id. at 33-35.

[3] Id. at 94-101.

[4] Id. at 35.

[5] Id. at 108.

[6] Titan Construction Corporation v. Uni-Field Enterprises, Inc., G.R. No. 153874, March 7, 2007, 517 SCRA 180, 186; Sigaya v. Mayuga, 504 Phil. 600, 611 (2005).

[7] See Child Learning Center, Inc. v. Tagorio, 512 Phil. 618, 623 (2005); Ilao-Quianay v. Mapile, 510 Phil. 736, 744-745 (2005).

[8] RULES OF COURT, Rule 18, Sec. 3:

SEC. 3. Notice of pre-trial.--The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

[9] Development Bank of the Phils. v. CA, 251 Phil. 390, 392-395 (1989). (Citations omitted.)

[10] See SSS v. Hon. Chaves, 483 Phil. 292, 302 (2004).

[11] Rollo, p. 105.

[12] Bank of the Philippine Islands v. Casa Montessori International, G.R. Nos. 149454 & 149507, May 28, 2004, 430 SCRA 261, 296.

[13] CIVIL CODE, Art. 2208, par. 2.

[14] CIVIL CODE, Art. 2208, par. 11.

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