

**AMIHAN BUS LINES, INC., PETITIONER, VS. ROMARS
INTERNATIONAL GASES CORPORATION, REPRESENTED BY
CHARLIE J. SAPUGAY; REGIONAL TRIAL COURT, BRANCH 36, IRIGA
CITY, PRESIDED BY HON. ...**

G.R. No. 180819. July 05, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review of the Resolutions[1] of the Court of Appeals (CA), affirming the issuances of the Regional Trial Court (RTC), Iriga City, Branch 36, in Civil Case No. IR-3532 for Damages filed by respondent Romars International Gases Corporation (respondent Romars) against herein petitioner Amihan Bus Lines, Inc.

The antecedent facts are as follows:

On February 20, 2005, at about 2:00 p.m., an almost head-on collision occurred between respondent Romars' gas tanker, with tractor number TCC 583 and trailer number UUP 138, and petitioner's bus, with plate number DVG 844, along Quirino highway in Ragay, Camarines Sur. The gas tanker was negotiating an inclined curve along Fort Junction Norte, Ragay, Camarines Sur when it was bumped by an oncoming Amihan Passenger Bus which suddenly took the lane of the gas tanker. Both vehicles were damaged, but the trailer truck was a total wreck.

On July 22, 2005, respondent Romars filed a complaint,[2] praying that judgment be rendered ordering petitioner to pay (1) actual damages in the following amounts: P800,000.00 for the replacement of the tractor head, and P50,000.00 per month in unrealized net income from the time of the incident until actual payment; (2) exemplary damages in the sum of P50,000.00; and (3) attorney's fees in the amount of P50,000.00. Petitioner filed its Answer with Compulsory Counterclaims,[3] alleging that the company had exercised the required diligence of a good father of a family in the selection and supervision of its employees. It prayed that the complaint be dismissed for lack of cause of action and that it be paid the following sums of money: P47,055.00 for the repair of the bus; P210,000.00 for unrealized profits incurred by petitioner; P50,000.00 for exemplary damages; and P50,000.00 for attorney's fees.

On January 27, 2006, a preliminary conference was held before the Branch Clerk of Court. Plaintiff therein, through counsel, submitted its pre-trial brief. Defendant's representative was present, but since its counsel was not around, a continuation of the preliminary conference was set for February 20, 2006.[4] After the defendant submitted its pre-trial brief, pre-trial was set for March 20, 2006.

When the case was called for pre-trial on March 20, 2006, only plaintiff's counsel was present. A representative of Amihan Bus Lines appeared to inform the court that the defendant was willing to have the case amicably settled. By agreement of the parties, pre-trial was set for March 29, 2006.[5] On said date, only plaintiff's counsel appeared, prompting the court to set the case for reception of plaintiff's evidence ex-parte on May 16, 2006. This Order was, however, reconsidered when defendant bus company appeared with a new counsel. The latter

manifested that he had recently been hired as counsel by the bus company, and asked for a resetting. There being no objection from the plaintiff, the court agreed to set the case anew for preliminary conference on July 3, 2006 and for pre-trial conference on July 10, 2006.[6] On the latter date, pre-trial was reset to August 31, 2006, where defendant's counsel again failed to appear, prompting the trial court to grant plaintiff's prayer that it be allowed to present its evidence ex-parte on October 11, 2006.[7]

Thereafter, on December 14, 2006, defendant filed an "Entry of Appearance with Motion to Allow Defendant to Present its Evidence," alleging that the non-appearance during the pre-trial conference on August 31, 2006 was due to the fact that defendant was not duly informed of the same since its counsel had withdrawn from the case.

Finding the excuse to be lame and not supported by the records, the trial court denied the motion.[8]

On April 17, 2007, the trial court rendered judgment in favor of the plaintiff. Based on the evidence presented, the trial court found that defendant's bus driver failed to take precautionary measures, as demanded by the situation. The court said that the bus driver decided to overtake a parked trailer along the curved lane without slowing down, thereby hitting the oncoming tractor which was traveling on the opposite lane. The trial court thus ruled:

WHEREFORE, premises considered, defendant Amihan Bus Lines, Inc. is hereby ordered plaintiff Romars International Gases Corporation represented by Charlie Sapugay, the following sum to wit:

- Eight Hundred Thousand Pesos (Php 800,000.00) as actual damages;
- Twenty Five Thousand Pesos (Php 25,000.00) as exemplary damages;
- Twenty Thousand Pesos (Php 20,000.00) as attorney's fees and litigation expenses[;] and
- To pay the costs of this suit.

SO ORDERED.[9]

Upon motion of the plaintiff, the trial court ordered the issuance of a writ of execution.[10] The motion for reconsideration filed by the defendant was denied.

Recourse to the CA was made by the defendant (now petitioner), seeking to annul the following issuances of the trial court: (1) decision dated April 17, 2007, finding petitioner liable; (2) Order dated January 18, 2007, denying the "Entry of Appearance with Motion to Present Evidence; and (3) Order dated June 26, 2007, granting respondent Romars' motion for execution. It contended that it "was prevented from having a fair trial through extrinsic fraud." [11]

On September 26, 2007, the CA dismissed the petition outright.

Hence, this petition alleging the following grounds:

I

THE GROSS NEGLIGENCE AND INCOMPETENCE OF PETITIONER'S FORMER COUNSEL AMOUNT TO EXTRINSIC FRAUD TO JUSTIFY THE ANNULMENT OF THE ASSAILED DECISION OF THE RESPONDENT RTC.

II

THE ASSAILED DECISION OF RESPONDENT RTC HAS NO LEGAL BASIS BECAUSE THE RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT RECONSIDERING THE ORDER DATED AUGUST 31, 2006,

III

THE EXECUTION PROCEEDINGS ARE NULL AND VOID BECAUSE THE EXECUTION PROCEEDINGS ARE NOT IN ACCORDANCE WITH THE RULES CONSIDERING THAT THE COUNSEL ON RECORD OF PETITIONER IS NOT SERVED WITH COPY OF THE ASSAILED DECISION OF THE RESPONDENT RTC AND THE PROCEDURES FOR EXECUTION OF MONETARY JUDGMENT ARE NOT FOLLOWED. [12]

The petition is devoid of merit.

It is doctrinal that the fraud that will justify annulment of a judgment is extrinsic fraud. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving him a false promise of a compromise, or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat. These instances show that there was never a real contest in the trial or hearing of the case so that the judgment should be annulled and the case set for a new and fair hearing.[13]

In the instant case, none of the foregoing instances exists to justify the annulment of the decision of the RTC. Petitioner's contention that the failure to present its side on account of its former counsel's gross negligence constitutes extrinsic fraud is untenable. The nature of extrinsic fraud necessarily requires that its cause be traceable to some fraudulent act of the prevailing party committed outside the trial of the case.[14] There is extrinsic fraud when a party was prevented from having presented all of his case to the court as when the lawyer connives at his defeat or corruptly sells out his client's interest.[15]

As found by the CA, there was actually "no hint of fraudulent scheme committed by the respondent which prevented the petitioner from having a fair trial or presenting its case." [16] The proceedings in the trial court clearly show that petitioner was not at all prevented by the prevailing party from fully exhibiting its defense before the court. We quote with approval the following disquisition of the appellate court:

[I]t is the firm belief of this Court that the petitioner has only itself to blame for the legal predicament it is in now, brought about by its own failure to observe some basic procedural rules.

For one, the re-setting of the pre-trial of the case below to 31 August 2006 was done in open court during the hearing conducted on 10 July 2006, the petitioner being a party thereto at that time was actually notified thereof but chose not to attend for reasons only known to it. Not only that, records on hand reveal that a copy of the 10 July 2006 Order was indeed received by the petitioner on 19 July 2006 but still, the latter opted not to attend thereat.

For another, notwithstanding receipt by the petitioner of the Order dated 31 August 2006 on 11 September 2006, the former did not take any remedial action therefrom by filing a timely motion for reconsideration.

Then, too, it took petitioner herein more than three (3) months, from the time the 31 August 2006 Order was issued, to file its "Entry of Appearance with Motion to Allow Defendant to Present Its Evidence" but failed to offer any reason persuasive enough for the respondent court to relax the stringent rules in its favor.

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Finally, it bears stressing that petitioner herein received a copy of the challenged Decision dated 17 April 2007 of the respondent court on 25 April 2007 but as it were in the past, no legal action therefrom was taken by the former to pursue its cause against the private respondent.[17]

We, therefore, rule that the mistake or negligence of petitioner's counsel was not so gross, palpable and inexcusable as to result in the violation of petitioner's substantive rights. As the records will show, the trial court and even respondent Romars had extended so much forbearance to petitioner. It cannot be denied that petitioner was remiss in exercising vigilance to protect its rights in its case. The failure of petitioner and its counsel to appear during the pre-trial was compounded by their inaction, and resulted in the finality and eventual execution of the default judgment. Petitioner cannot put all the blame for this fiasco on its counsel and then claim that it was denied due process under the badge of extrinsic fraud.

WHEREFORE, the petition is DENIED for lack of merit.

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

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Arcangelita Romilla-Lontok and Ramon M. Bato, Jr., concurring; rollo, pp. 29-38, 39-41.

[2] Id. at 42-46.

[3] Id. at 50-55.

[4] Order dated January 27, 2006; id. at 61.

[5] Order dated March 20, 2006; id. at 62.

[6] Order dated May 16, 2006; id. at 64.

[7] Order dated August 31, 2006; id. at 66.

[8] Id. at 72-74.

[9] Id. at 80.

[10] Id. at 82.

[11] Id. at 32.

[12] Id. at 15.

[13] *Leonardo v. S.T. Best, Inc.*, 466 Phil. 981 (2004).

[14] *Salonga v. Court of Appeals*, 336 Phil. 514 (1997).

[15] *See Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222 (2000).

[16] Rollo, p. 34.

[17] Id. at 34-37.

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