

GOVERNMENT SERVICE INSURANCE SYSTEM [GSIS], PETITIONER, VS. NATIONAL FOOD AUTHORITY, HONORABLE COURT OF APPEALS AND ALBERTO L. FAJARDO, RESPONDENTS.

G.R. No. 95573. October 25, 1995

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals affirming the decision of the Regional Trial Court in Quezon City, Branch 86 which, among others, ordered petitioner Government Service Insurance System (GSIS) and private respondent Alberto L. Fajardo to pay jointly and severally respondent National Food Authority (NFA) the amount of P56,666.67 plus twelve percent (12%) interest thereon per annum from the date of filing of the complaint until fully paid and dismissed petitioner's cross-claim.

On July 1, 1983, the NFA entered into a Contract of Palay Milling with Fajardo under which the former engaged the services of the latter to mill NFA palay into good regular milled rice.

The deliveries of palay were received by Bernabe Rice Mill I and II. Both rice mills are owned by Rosalina Bernabe. Bernabe Rice Mill I was operated by Rosalina Bernabe, mother-in-law of Fajardo; while Bernabe Rice Mill II was operated by Adriano Golingan.

The NFA required Fajardo to post bond. Fajardo secured from GSIS G (21) GIF Bond No. 00392 in the amount of P56,666.67 or which corresponds to thirty-three and one-half percent (33 1/2%) of the current market value of the 2,000 bags of palay to be received for milling. Fajardo in turn, executed an indemnity agreement in favor of GSIS.

In the course of milling operation, covering the period from June to November 1983, Fajardo incurred a total shortage of 67,824.01 kilos of milled rice valued at P297,069.16. Likewise, Fajardo incurred a shortage in empty jute sacks amounting to P31,638.46.

The NFA sent a letter to Fajardo dated July 4, 1984, demanding payment in the amount of P292,040.42 representing rice shortage. The NFA also made a demand dated August 3, 1984 upon GSIS on the bond issued by the latter.

Another letter of demand dated April 2, 1985 was sent to Fajardo in connection with the milled rice and empty jute sack shortage. Fajardo made no response.

The NFA filed a complaint for sum of money and damages against GSIS and Fajardo.

In his Answer, Fajardo denied liability for the shortage and attributed it to Rosalina Bernabe and Adriano Golingan.

The GSIS also filed an answer with cross-claim against Fajardo based on the Indemnity Agreement.

After trial, the RTC rendered a Decision whose dispositive portion states:

"WHEREFORE, judgement is hereby rendered ordering:

- defendant Alberto L. Fajardo and the GSIS, jointly and severally, to pay plaintiff NFA, the amount of P56,666.67 plus 12% interest thereon per annum from date of filing of complaint until fully paid;
- defendant Alberto L. Fajardo to pay plaintiff the sum of P234,128.45 plus 12% interest thereon per annum from date of filing of complaint until fully paid;
- defendant Alberto L. Fajardo to pay plaintiff the sum of P31,638.46 plus 12% interest thereon from date of filing of complaint until fully paid;
- defendant Alberto L. Fajardo to pay plaintiff NFA the sum of P20,000.00, as exemplary damages;
- defendant Alberto L. Fajardo to pay plaintiff NFA the sum of P5,000.00 as and for attorney's fees, plus costs of the suit.

All other claims and counterclaims are hereby dismissed.

SO ORDERED."

The Decision of the trial court was affirmed by the respondent Court of Appeals on June 29, 1990.

In this petition, petitioner urges the following:

"IV

REASONS FOR THE ALLOWANCE OF THIS PETITION

1.

THE RESPONDENT COURT OF APPEALS HAS DECIDED THE CASE NOT IN ACCORD WITH THE APPLICABLE JURISPRUDENCE, SUCH THAT:

(A)

It affirmed the decision of the Trial Court's finding that petitioner is liable under the Surety Bond despite the fact that fraud and misrepresentation were duly proven to have been employed by obligor defendant Alberto L. Fajardo in securing and/or obtaining the Surety Bond;

(B)

It affirmed the decision of the Trial Court dismissing 'all other claims and counterclaims' despite the fact that the cross-claim of petitioner herein against defendant Alberto L. Fajardo had been pleaded and had been duly proven.

2.

THE RESPONDENT COURT OF APPEALS ERRED WHEN IT UPHELD THE DECISION OF THE TRIAL COURT DISMISSING ALL OTHER CLAIMS AND COUNTERCLAIMS DESPITE ITS OWN PRONOUNCEMENT THAT THE INDEMNITY AGREEMENT OF FAJARDO WITH THE GSIS IS VALID."

We find no merit in the first contention of petitioner. The liability of petitioner to the NFA pursuant to the bond it issued in favor of Fajardo is clear. The alleged fraud and misrepresentation perpetrated by Fajardo cannot be used by petitioner to avoid its undertaking with the NFA. Likewise, allegations of fraud and misrepresentation pose factual questions which this Court, as a rule, does not review in a petition for review on certiorari. The oft repeated rule is that petitions for review on certiorari can only raise errors of jurisdiction.

We, however, sustain petitioner's contention that respondent court erred in dismissing its cross-claim against Fajardo. Respondent court itself found that the Indemnity Agreement between the petitioner and Fajardo is valid. The obligation of Fajardo to the petitioner under this Agreement is clearly spelled out, viz:

"(b) INDEMNITY. - To indemnify the GSIS at its principal offices for any damages, prejudice, losses, costs, payments, advances and expenses of whatever kind and nature, including counsel for attorney's fees, which the GSIS may at any time sustain or incur, as a consequence of having executed the above-mentioned Bond, its renewals, extensions or substitution and said attorney's fees shall not be less than fifteen (15%) percent of the amount claimed by the GSIS in each action, the same to be due and payable, irrespective of whether the case is settled judicially or extra-judicially."

Fajardo did not assail the existence and due execution of this Indemnity Agreement. He is bound to comply with its term.

IN VIEW WHEREOF, the Decision dated June 29, 1990 of the respondent court is modified. Private respondent Alberto L. Fajardo is hereby ordered to pay petitioner GSIS whatever amount the latter has been adjudged to pay NFA in Civil Case No. Q-44772. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

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