816 Phil. 163

SECOND DIVISION

[G.R. No. 191937, August 09, 2017]

ORIENT FREIGHT INTERNATIONAL, INC., PETITIONER, V. KEIHIN-EVERETT FORWARDING COMPANY, INC., RESPONDENT.

D E C I S I O N

LEONEN, J.:

Article 2176 of the Civil Code does not apply when the party's negligence occurs in the performance of an obligation. The negligent act would give rise to a quasi-delict only when it may be the basis for an independent action were the parties not otherwise bound by a contract.

This resolves a Petition for Review[1] on Certiorari under Rule 45 of the Rules of Court, assailing the January 21, 2010 Decision[2] and April 21, 2010 Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court February 27, 2008 Decision.[4] The Regional Trial Court found that petitioner Orient Freight International, Inc.'s (Orient Freight) negligence caused the cancellation of Keihin-Everett Forwarding Company, Inc.'s (Keihin-Everett) contract with Matsushita Communication Industrial Corporation of the Philippines (Matsushita).[5]

On October 16, 2001, Keihin-Everett entered into a Trucking Service Agreement with Matsushita. Under the Trucking Service Agreement, Keihin-Everett would provide services for Matsushita's trucking requirements. These services were subcontracted by Keihin-Everett to Orient Freight, through their own Trucking Service Agreement executed on the same day.[6]

When the Trucking Service Agreement between Keihin-Everett and Matsushita expired on December 31, 2001, Keihin-Everett executed an In-House Brokerage Service Agreement for Matsushita's Philippine Economic Zone Authority export operations. Keihin-Everett continued to retain the services of Orient Freight, which sub-contracted its work to Schmitz Transport and Brokerage Corporation.[7]

In April 2002, Matsushita called Keihin-Everett's Sales Manager, Salud Rizada, about a column in the April 19, 2002 issue of the tabloid newspaper Tempo. This news narrated the April 17, 2002 interception by Caloocan City police of a stolen truck filled with shipment of video monitors and CCTV systems owned by Matsushita.[8]

When contacted by Keihin-Everett about this news, Orient Freight stated that the tabloid report had blown the incident out of proportion. They claimed that the incident simply involved the breakdown and towing of the truck, which was driven by Ricky Cudas (Cudas), with truck helper, Rubelito Aquino[9] (Aquino). The truck was promptly released and did not miss the closing time of the vessel intended for the shipment.[10]

Keihin-Everett directed Orient Freight to investigate the matter. During its April 20, 2002 meeting with Keihin-Everett and Matsushita, as well as in its April 22, 2002 letter addressed to Matsushita, Orient Freight reiterated that the truck merely broke down and had to be towed.[11]

However, when the shipment arrived in Yokohama, Japan on May 8, 2002, it was discovered that 10 pallets of the shipment's 218 cartons, worth US$34,226.14, were missing.[12]

Keihin-Everett independently investigated the incident. During its investigation, it obtained a police report from the Caloocan City Police Station. The report stated, among others, that at around 2:00 p.m. on April 17, 2002, somewhere in Plaza Dilao, Paco Street, Manila, Cudas told Aquino to report engine trouble to Orient Freight. After Aquino made the phone call, he informed Orient Freight that the truck had gone missing. When the truck was intercepted by the police along C3 Road near the corner of Dagat-Dagatan Avenue in Caloocan City, Cudas escaped and became the subject of a manhunt.[13]

When confronted with Keihin-Everett's findings, Orient Freight wrote back on May 15, 2002 to admit that its previous report was erroneous and that pilferage was apparently proven.[14]

In its June 6, 2002 letter, Matsushita terminated its In-House Brokerage Service Agreement with Keihin-Everett, effective July 1, 2002. Matsushita cited loss of confidence for terminating the contract, stating that Keihin-Everett's way of handling the April 17, 2002 incident and its nondisclosure of this incident's relevant facts "amounted to fraud and signified an utter disregard of the rule of law."[15]

Keihin-Everett, by counsel, sent a letter dated September 16, 2002 to Orient Freight, demanding P2,500,000.00 as indemnity for lost income. It argued that Orient Freight's mishandling of the situation caused the termination of Keihin-Everett's contract with Matsushita.[16]

When Orient Freight refused to pay, Keihin-Everett filed a complaint dated October 24, 2002 for damages with Branch 10, Regional Trial Court, Manila. The case was docketed as Civil Case No. 02-105018.[17] In its complaint, Keihin-Everett alleged that Orient Freight's "misrepresentation, malice, negligence and fraud" caused the termination of its In-House Brokerage Service Agreement with Matsushita. Keihin-Everett prayed for compensation for lost income, with legal interest, exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[18]

In its December 20, 2002 Answer, Orient Freight claimed, among others, that its initial ruling of pilferage was in good faith as manifested by the information from its employees and the good condition and the timely shipment of the cargo. It also alleged that the contractual termination was a prerogative of Matsushita. Further, by its own Audited Financial Statements on file with the Securities and Exchange Commission, Keihin-Everett derived income substantially less than what it sued for. Along with the dismissal of the complaint, Orient Freight also asserted counterclaims for compensatory and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[19]

The Regional Trial Court rendered its February 27, 2008 Decision,[20] in favor of Keihin-Everett. It found that Orient Freight was "negligent in failing to investigate properly the incident and make a factual report to Keihin[-Everett] and Matsushita," despite having enough time to properly investigate the incident.[21]

The trial court also ruled that Orient Freight's failure to exercise due diligence in disclosing the true facts of the incident to Keihin-Everett and Matsushita caused Keihin-Everett to suffer income losses due to Matsushita's cancellation of their contract.[22] The trial court ordered Orient Freight "to pay [Keihin-Everett] the amount of [P] 1,666,667.00 as actual damages representing net profit loss incurred" and P50,000.00 in attorney's fees.[23] However, it denied respondent's prayer for exemplary damages, finding that petitioner did not act with gross negligence.[24]

Orient Freight appealed the Regional Trial Court Decision to the Court of Appeals. On January 21, 2010, the Court of Appeals issued its Decision[25] affirming the trial court's decision. It ruled that Orient Freight "not only had knowledge of the foiled hijacking of the truck carrying the . . . shipment but, more importantly, withheld [this] information from [Keihin-Everett]."[26]

The Court of Appeals ruled that the oral and documentary evidence has established both the damage suffered by Keihin-Everett and Orient Freight's fault or negligence. Orient Freight was negligent in not reporting and not thoroughly investigating the April 17, 2002 incident despite Keihin-Everett's instruction to do so.[27] It further ruled that while Keihin-Everett sought to establish its claim for lost income of P2,500,000.00 by submitting its January 2002 to June 2002 net income statement, [28] this was refuted by Orient Freight by presenting Keihin-Everett's own audited financial statements. The Court of Appeals held that the trial court correctly arrived at the amount of P1,666,667.00 as the award of lost income.[29]

The Court of Appeals denied Orient Freight's Motion for Reconsideration in its April 21, 2010 Resolution.[30]

On June 9, 2010, Orient Freight filed this Petition for Review on Certiorari under Rule 45 with this Court, arguing that the Court of Appeals incorrectly found it negligent under Article 2176 of the Civil Code.[31] As there was a subsisting Trucking Service Agreement between Orient Freight itself and Keihin-Everett, petitioner avers that there was a pre-existing contractual relation between them, which would preclude the application of the laws on quasi-delicts.[32]

Applying the test in *Far East Bank and Trust Company v. Court of Appeals*,[33] petitioner claims that its failure to inform respondent Keihin-Everett about the hijacking incident could not give rise to a quasi-delict since the Trucking Service Agreement between the parties did not include this obligation. It argues that there being no obligation under the Trucking Service Agreement to inform Keihin-Everett of the hijacking incident, its report to Keihin-Everett was done in good faith and did not constitute negligence. Its representations regarding the hijacking incident were a sound business judgment and not a negligent act.[34] Finally, it claims that the Court of Appeals incorrectly upheld the award of damages, as the trial court had based its computation on, among others, Keihin-Everett's profit and loss statement. [35]

On August 2, 2010, Keihin-Everett filed its Comment,[36] arguing that the petition does not contain the names of the parties in violation of Rule 45, Section 4 of the Rules of Court. It contends that the issues and the arguments raised in this petition are the same issues it raised in the Regional Trial Court and the Court of Appeals.[37] It claims that the findings of fact and law of the Court of Appeals are in accord with this Court's decisions.[38]

On October 7, 2010, Orient Freight filed its Reply.[39] It notes that a cursory reading of the petition would readily show the parties to the case. It claims that what is being contested and appealed is the application of the law on negligence by lower courts and, while the findings of fact by the lower courts are entitled to great weight, the exceptions granted by jurisprudence apply to this case. It reiterates that the pre-existing contractual relation between the parties should bar the application of the principles of quasi-delict. Because of this, the terms and conditions of the contract between the parties must be applied. It also claimed that the Regional Trial Court's computation of the award included figures from respondent's Profit and Loss Statement, which the trial court had allegedly rejected. It rendered the computation unreliable.[40]

This Court issued a Resolution[41] dated February 16, 2011, requiring petitioner to submit a certified true copy of the Regional Trial Court February 27, 2008 Decision.

On March 31, 2011, petitioner filed its Compliance,[42] submitting a certified true copy of the Regional Trial Court Decision.

The issues for this Court's resolution are:

First, whether the failure to state the names of the parties in this Petition for Review, in accordance with Rule 45, Section 4 of the Rules of Court, is a fatal defect;

Second, whether the Court of Appeals, considering the existing contracts in this case, erred in applying Article 2176 of the Civil Code;

Third, whether Orient Freight, Inc. was negligent for failing to disclose the facts surrounding the hijacking incident on April 17, 2002, which led to the termination of the Trucking Service Agreement between Keihin-Everett Forwarding Co., Inc. and Matsushita Communication Industrial Corporation of the Philippines; and

Finally, whether the trial court erred in the computation of the awarded actual and pecuniary loss by basing it on, among others, the Profit and Loss Statement submitted by Keihin-Everett Forwarding Co., Inc.

The petition is denied.

I

The petition does not violate Rule 45, Section 4 of the Rules of Court[43] for failing to state the names of the parties in the body. The names of the parties are readily discernable from the caption of the petition, clearly showing the appealing party as the petitioner and the adverse party as the respondent. The Court of Appeals had also been erroneously impleaded in the petition. However, this Court in *Aguilar v. Court of Appeals, et al.*[44] ruled that inappropriately impleading the lower court as

respondent does not automatically mean the dismissal of the appeal. This is a mere formal defect.[45]

II

Negligence may either result in *culpa aquiliana* or *culpa contractual*.[46] *Culpa aquiliana i*s the "the wrongful or negligent act or omission which creates a vinculum juris and gives rise to an obligation between two persons not formally bound by any other obligation,"[47] and is governed by Article 2176 of the Civil Code:

> Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Negligence in *culpa contractual*, on the other hand, is "the fault or negligence incident in the performance of an obligation which already-existed, and which increases the liability from such already existing obligation."[48] This is governed by Articles 1170 to 1174 of the Civil Code:[49]

> Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.
>
> Article 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.
>
> Article 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.
>
> Article 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.
>
> If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.
>
> Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

Actions based on contractual negligence and actions based on quasi-delicts differ in terms of conditions, defenses, and proof. They generally cannot co-exist.[50] Once a breach of contract is proved, the defendant is presumed negligent and must prove not being at fault. In a quasi-delict, however, the complaining party has the burden of proving the other party's negligence.[51] In *Huang v. Phil. Hoteliers, Inc.*:[52]