659 Phil. 117

SECOND DIVISION

[G.R. No. 161282, February 23, 2011]

FGU INSURANCE CORPORATION (NOW BPI/MS INSURANCE CORPORATION), PETITIONER, VS. REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66, AND G.P. SARMIENTO TRUCKING CORPORATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for mandamus praying that the July 1, 2003 and November 3, 2003 orders [1] of the Regional Trial Court Branch 66, Makati City (*RTC*), which granted the Motion To Set Case For Hearing filed by private respondent G.P. Sarmiento Trucking Corporation *(GPS),* be set aside and, in lieu thereof, "a decision be rendered ordering the lower court to issue the Writ of Execution in Civil Case No. 94-3009 in consonance with the decision of this venerable court dated August 6, 2002."[2]

Records show that on June 18, 1994, GPS agreed to transport thirty (30) units of Condura S.D. white refrigerators in one of its Isuzu trucks, driven by Lambert Eroles *(Eroles)*, from the plant site of Concepcion Industries, Inc. *(CII)* in Alabang, to the Central Luzon Appliances in Dagupan City. On its way to its destination, however, the Isuzu truck collided with another truck resulting in the damage of said appliances.

FGU Insurance Corporation *(FGU),* the insurer of the damaged refrigerators, paid CII, the insured, the value of the covered shipment in the sum of P204,450.00. FGU, in turn, as subrogee of the insured's rights and interests, sought reimbursement of the amount it paid from GPS.

The failure of the GPS to heed FGU's claim for reimbursement, led the latter to file a complaint for damages and breach of contract of carriage against the former and its driver, Eroles, with the RTC. During the hearing of the case, FGU presented evidence establishing its claim against GPS. For its part, GPS filed a motion to dismiss by way of demurrer to evidence, which was granted by the RTC.

The RTC ruled, among others, that FGU failed to adduce evidence that GPS was a common carrier and that its driver was negligent, thus, GPS could not be made liable for the damages of the subject cargoes. On appeal, the Court of Appeals *(CA)* affirmed the ruling of the RTC. The case was then elevated to this Court. On August 6, 2002, the Court rendered a decision[3] agreeing with the lower courts that GPS was not a common carrier but nevertheless held it liable under the doctrine of culpa contractual. Thus, the dispositive portion of the Court's decision reads as follows:

> WHEREFORE, the order, dated 30 April 1996, of the Regional Trial Court, Branch 66, of Makati City, and the decision, dated 10 June 1999, of the Court of Appeals, are AFFIRMED only insofar as respondent Lambert M. Eroles is concerned, but said assailed order of the trial court and decision of the appellate court are REVERSED as regards G.P. Sarmiento Trucking Corporation which, instead, is hereby ordered to pay FGU Corporation the value of the damaged and lost cargoes in the amount of P204,450.00. No costs.
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> SO ORDERED.

On September 18, 2002, this Court denied GPS' motion for reconsideration with finality.[4] In due course, an entry of judgment[5] was issued certifying that the August 6, 2002 decision of this Court became final and executory on October 3, 2002.

On October 14, 2002, FGU filed a motion for execution[6] with the RTC praying that a writ of execution be issued to enforce the August 6, 2002 judgment award of this Court in the amount of P204,450.00.

On November 5, 2002, GPS filed its Opposition to Motion for Execution[7] praying that FGU's motion for execution be denied on the ground that the latter's claim was unlawful, illegal, against public policy and good morals, and constituted unjust enrichment. GPS alleged that it discovered, upon verification from the insured, that after the insured's claim was compensated in full, the insured transferred the ownership of the subject appliances to FGU. In turn, FGU sold the same to third parties thereby receiving and appropriating the consideration and proceeds of the sale. GPS believed that FGU should not be allowed to "doubly recover" the losses it suffered.

Thereafter, on January 13, 2003, GPS filed its Comment with Motion to Set Case for Hearing on the Merits.[8]

On July 1, 2003, the RTC issued an order granting GPS motion to set case for hearing. Its order, in its pertinent parts, reads:

> X x x.
>
> The defendant, however, contends that it has already turned over to the consignee the 30 refrigerator units subject[s] of the case. It also appears from the record that the Accounting/Administrative Manager of Concepcion Industries has executed a *certification* to the effect that the assured company has turned over the refrigerator units in question to plaintiff.
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> In view of the foregoing and considering that plaintiff may not be allowed to recover more than what it is entitled to, there is a need for the parties to clarify the following issues to allow a fair and judicious resolution of plaintiff's motion for issuance of a writ of execution:

1) Was there an actual turn-over of 30 refrigerators to the plaintiff?

2) In the affirmative, what is the salvage value of the 30 refrigerators?

WHEREFORE, the Court hereby orders both parties to present evidence in support of their respective positions on these issues.

SO ORDERED.[9] [Italicization in the original]

Upon denial of its motion for reconsideration, FGU filed this petition for mandamus directly with this Court on the following

GROUNDS

THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS DUTY WHEN IT RE-OPENED A CASE, THE DECISION OF WHICH HAD ALREADY ATTAINED FINALITY.

THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS MINISTERIAL DUTY WHEN IT DENIED THE ISSUANCE OF A WRIT OF EXECUTION.

In advocacy of its position, FGU argues that the decision is already final and executory and, accordingly, a writ of execution should issue. The lower court should not be allowed to hear the matter of turnover of the refrigerators to FGU because it was not an issue raised in the Answer of GPS. Neither was it argued by GPS in the CA and in this Court. It was only brought out after the decision became final and executory.

Indeed, a writ of mandamus lies to compel a judge to issue a writ of execution when the judgment had already become final and executory and the prevailing party is entitled to the same as a matter of right.[10]

Fundamental is the rule that where the judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the writ of execution.[11] In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty. The lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution; much less may it review the same upon any matter decided on appeal or error apparent; nor intermeddle with it further than to settle so much as has been demanded.[12]