

FIRST DIVISION

[G.R. NO. 141733, February 08, 2007]

**SECURITY BANK CORPORATION, PETITIONER, VS. HON. COURT
OF APPEALS, LIBERTY INSURANCE CORPORATION AND
PHILIPPINE INDUSTRIAL SECURITY AGENCY CORPORATION,
RESPONDENTS.**

D E C I S I O N

PUNO, CJ:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court to set aside the Decision dated August 31, 1999 and the Resolution dated January 31, 2000 of the Court of Appeals in CA-G.R. CV No. 45259, ^[1] which affirmed the Order dated July 12, 1993 of the Regional Trial Court (RTC), dismissing the complaint of petitioner Security Bank Corporation (SBC) *pro tanto* as against respondent Philippine Industrial Security Agency Corporation (PISA). ^[2]

On October 23, 1991, SBC and PISA entered into a "Contract of Security Services" (CSS) ^[3] wherein PISA undertook to secure, guard, and protect the personnel and property of SBC through the deployment of qualified and properly equipped guards in SBC's premises and branches. Paragraph 9 of the CSS provides:

[PISA] shall be liable for any loss, damage or injury suffered by [SBC], its officers, employees, clients, guests, visitors and other persons allowed entry into [SBC's] premises where such loss, damage or injury is due to the negligence or willful act of the guards or representatives of [PISA]. If such loss, damage or injury is caused by a party other than the guards or representatives of [PISA], [PISA] shall be jointly and severally liable with said party if [PISA] failed to exercise due [diligence] in preventing such loss, damage or injury. ^[4]

Paragraph 12 of the CSS also provides:

12. [SBC] obliges itself to inform [PISA] in writing through [the] Guard-in-Charge assigned to the former, the existence of any loss or damage to [SBC's] properties within Forty-Eight (48) hours after its discovery by [SBC]; otherwise, [SBC] shall be considered to have waived its right to proceed against [PISA] by reason of such loss or damage. **Such written notice is not required if [PISA] took part in the investigation of the loss or damage or in case the loss or damage is caused by [PISA's] guard/s or representative/s, in which case [SBC] may assert the claim for reimbursement at any time.** x x x ^[5] (*Emphasis added*)

On March 12, 1992, the Taytay Branch Office of SBC was robbed PHP12,927,628.01. Among the suspects in the robbery were two regular security guards of PISA. [6]

At the time, SBC Taytay Branch was covered by a "Money, Securities and Payroll Robbery Policy" with Liberty Insurance Corporation (LIC), wherein the latter endeavored to indemnify the former against "loss of money, payroll and securities that may result from robbery or any attempt thereof within the premises of SBC's Taytay Branch Office, up to the maximum amount of PHP9,900,000.00." [7] The insurance policy provided, however, that LIC would not be liable if the loss was caused by any dishonest, fraudulent or criminal act of SBC officers, employees or by its authorized representative. [8]

On June 23, 1992, SBC and PISA entered into a Post-Robbery Agreement (PRA) whereby PISA paid PHP3,027,728.01, which was the difference between the total amount lost and the maximum amount insured. [9] PISA made the payment in the interest of maintaining good relations, without necessarily admitting its liability for the loss suffered by SBC by reason of the Taytay robbery. [10]

Paragraph 5 of the PRA specifically states that PISA's payment was subject to express terms and conditions, one of which was the following:

(e) The parties hereto further agree that this agreement and/or payment of the whole amount of P3,027,728.01, shall not affect or prejudice, directly or indirectly, whatever cause of action SBC may have against PISA and whatever claim or defense the latter may have against SBC, if the maximum recoverable proceeds of the insurance covering the loss suffered by SBC could not be recovered from the insurer. Further, it is agreed that should Security Guards Wilson Taca and Ernesto Mariano be absolved from the charge of robbery in band and/or are found by the proper court not to have been involved at all in the alleged conspiracy, and that it is duly established through legal action before the competent court that their failure to prevent the robbery was not due to their, or their PISA co-guards' negligence and/or willful act, whatever installments may have been paid by PISA under this Agreement shall be reimbursed with legal interest to be computed from the time of actual payment, the same to be amortized in eighteen (18) equally monthly installments, with the interest thereto being based on the diminishing balance. [11] *(Emphasis added)*

SBC filed a claim with LIC based on its existing insurance policy. LIC denied the claim for indemnification on August 5, 1992, on the ground that the loss suffered by SBC fell under the general exceptions to the policy, in view of the alleged involvement of PISA's two security guards. [12]

In its letter dated August 28, 1992, SBC informed PISA of the denial of the former's insurance claim with LIC and thereafter sought indemnification of the unrecovered amount of PHP9,900,000.00. [13] PISA denied the claim in a letter written by its counsel, dated September 17, 1992, to wit: [14]

We have advised our client that your letter of demand appears to be premature, in light of the following circumstances:

(a) precisely under par. 5(e) of the [PRA], upon which your demand letter is based, it is too early in the day to impute to our client any responsibility for the loss suffered by the bank.

(b) The mere rejection by the insurer of the Bank's claim does not really seal the fate of said claim, for the Bank can very ably show that the insurer erred in rejecting the claim.

(c) In any case, the question of criminal involvement of PISA's guards has not been resolved as yet by a competent court as called for by par. 5(e) of the [PRA], let alone with any degree of finality. [15]

On November 16, 1992, SBC filed a complaint for a sum of money against LIC based on the "Money, Securities and Payroll Robbery Policy," and against PISA as an alternative defendant based on the CSS. SBC prayed that it be indemnified by either one of the defendants for PHP9,900,000.00 plus 15% as attorney's fees and cost of suit. [16]

Instead of filing an answer, PISA filed a motion to dismiss, on the ground that the complaint failed to state a cause of action and/or the supposed cause of action was premature. [17] PISA, noting that it was being sued by SBC under an alternative cause of action, invoked paragraph 5(e) of the PRA and claimed that SBC's right of action against PISA was subject to at least two suspensive conditions. *First*, SBC could not recover the PHP9.9-million from the insurer, defendant LIC; and *second*, the two security guards facing criminal prosecution for robbery in band must first be convicted and found to have been involved in the robbery or otherwise found by a competent court to have been negligent. According to PISA, SBC's complaint made no averment that (a) there had been a final judgment rejecting SBC's claim against the insurer; or (b) that the two PISA guards had been convicted of the charge of robbery in band, or had been found by a competent court to have been involved in the alleged conspiracy or to have been negligent in connection with the robbery. Hence, PISA concluded that SBC's complaint against it was premature and should be dismissed. [18]

SBC opposed PISA's motion to dismiss, arguing that the latter's interpretation of the PRA was erroneous. [19] According to SBC, the CSS was expressly made an integral part of the PRA, so their provisions "should be used hand in hand" in determining the respective rights and obligations of the parties. Thus, the PRA "does not, to the exclusion of [the CSS], control or govern the determination of the right - or accrual of the right" of SBC to sue PISA. [20] Invoking paragraph 12 of the CSS, SBC asserted that it could pursue its claim for reimbursement against PISA at any time, without regard to the fulfillment or non-fulfillment of the supposed suspensive conditions.

SBC also denied that the PRA had suspensive conditions. It claimed that the interim non-recovery of the insured amount may only be an occasion for SBC to suspend the collection of PISA's liability, but does not operate to prevent SBC from pursuing its claim against PISA anytime. SBC pointed out that the insurance contract was not intended for PISA's benefit, as the latter was not privy to the contract and hence, could not avail itself of the benefits thereby given to SBC. As for the second alleged

suspensive condition, SBC disagreed that the conviction or acquittal of the guards (from the robbery charge) would preclude SBC from recovering against PISA, as the former could still prove the other security guards' negligence, for which PISA may be made liable. SBC then stressed that the main issue in the criminal case was the guilt of the accused guards, whereas the issue in its civil complaint pertains to the negligence of the same, or that of the other guards of PISA, and PISA's liability therefor. SBC thus posits that it was not necessary for it to make averments as to the fulfillment of these two alleged suspensive conditions.

The RTC granted PISA's motion, and dismissed the case *pro tanto* as against PISA.

[21] The trial court sustained PISA's interpretation of the PRA, i.e., that the latter's liability to SBC for the losses incurred from the March 12, 1992 robbery was dependent upon the occurrence of two events: (1) SBC's claim for indemnity against LIC is resolved by final judgment against the bank; and (2) the two security guards of PISA facing criminal charges for robbery are found guilty, or declared to have been negligent in the performance of their guard duties. Since SBC's complaint made no averment as to the fulfillment of these suspensive conditions, the RTC held that the suit by SBC against PISA was premature. [22]

The RTC likewise denied SBC's motion for reconsideration. [23]

On appeal, the Court of Appeals affirmed the dismissal. [24] Although it ruled that SBC's right of action against PISA was not subject to the condition that the two security guards of PISA facing criminal charges for robbery should have been found guilty, or declared to have been negligent in the performance of their guard duties, the appellate court held that SBC's right of action against PISA was subject to a condition precedent, i.e., that there first be a final adjudication of SBC's case against LIC, denying SBC's claim for indemnification. According to the Court of Appeals, the PRA takes precedence over the CSS in respect of PISA's liability for the robbery.

Unsatisfied, SBC comes now before this Court, on the grounds that the Court of Appeals erred in declaring:

(1) A suspensive condition exists in paragraph 5 of the PRA which bars SBC from impleading PISA as an alternative defendant in civil case No. 92-337 until after the final adjudication of the suit instituted by SBC against LIC for payment of indemnity; and

(2) The PRA takes precedence over the CSS.

We grant the petition.

At the outset, it should be noted that at the heart of this controversy is the proper interpretation of paragraph 5(e) of the PRA, which provides:

The parties hereto further agree that this agreement and/or payment of the whole amount of P3,027,728.01, shall not affect or prejudice, directly or indirectly, whatever cause of action SBC may have against PISA and whatever claim or defense the latter may have against SBC, if the maximum recoverable proceeds of the insurance covering the loss suffered by SBC could not be recovered from the insurer. x x x

Prior to the robbery, the right of SBC to claim indemnity from PISA for the damage done by the willful or negligent acts of the former's guards could be asserted at any time, under paragraphs 9 and 12 of the CSS. But after the robbery and the execution of the PRA, the question now raised is whether SBC's right of action against PISA accrues only upon the non-recovery of indemnity from LIC; and if so, whether the non-recovery should be the result of a final adjudication by a court.

It is the thrust of PISA's arguments that while the CSS governs *generally* the question of PISA's liability to SBC (for the loss, damage or injury that is due to the negligence or willful act of PISA's guards or representatives), SBC's complaint deals with a specific situation arising from a distinct, particular event of robbery, for which PISA and SBC have executed a new special "Agreement" (the PRA) to govern their rights and obligations. Invoking the maxim *generalia specialibus non derogant* (general provisions do not derogate special or specific ones), PISA asserts that the PRA precisely governs the question of whether SBC's right to sue PISA for an alleged liability arising from robbery has accrued and become enforceable. Thus, it is alleged that SBC's right to sue PISA is no longer unrestricted, as the clear import of paragraph 5(e) of the PRA is that recovery of the insurance proceeds would affect or prejudice SBC's claim against PISA. PISA argues, therefore, that it is only upon the failure of SBC to recover from the insurance proceeds, by final judgment, that the latter would have recourse against PISA.

SBC, on the other hand, argues that the legal effect of a contract (the PRA) is not to be determined alone by any particular provision taken separately and independently from other provisions thereof. The contract must be taken as a whole, inclusive of all annexes that have been made an integral part. SBC argues that there was no intention to make the PRA a separate and independent agreement that would take precedence over other agreements between the parties because of the following reasons:

(a) paragraph 1 of the PRA explicitly states that "the respective rights and obligations of the parties x x x with respect to the security services being performed by PISA is embodied in x x x the 'Contract of Security Services;'"

(b) the contract of security services was explicitly attached and made an integral part of the PRA; and

(c) it is in paragraph 9 of the CSS that PISA's liability is determined for the loss, damage or injury due to the negligence or willful act of the guards or representative of PISA, or when such loss, damage or injury is caused by another party if PISA failed to exercise due diligence in preventing such loss, damage or injury.

SBC, therefore, denies that paragraph 5(e) made the non-recovery from LIC a condition precedent before SBC could file a case against PISA.

SBC also asserts that even if it could be argued that the PRA governs the liability of PISA as to the robbery, this liability would only be for the amount of PHP3,027,728.01 which the latter has paid, and not the PHP9,900,000.00, which is the balance of the loss suffered by SBC from the robbery. This balance, SBC said it could pursue against PISA at any time, pursuant to the CSS.