

## THIRD DIVISION

[ G.R. No. 138123, March 12, 2002 ]

**MINDEX RESOURCES DEVELOPMENT, PETITIONER, VS. EPHRAIM MORILLO, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Attorney's fees cannot be granted simply because one was compelled to sue to protect and enforce one's right. The grant must be proven by facts; it cannot depend on mere speculation or conjecture -- its basis must be stated in the text of the decision.

### The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the March 26, 1999 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-GR CV No. 46967. The dispositive portion of the challenged Decision reads as follows:

"WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION that the legal interest to be paid on the rentals of P76,000.00 and costs of repair in the amount of P132,750.00 is six (6%) percent *per annum* from June 22, 1994, the date of the decision of the court *a quo* to the date of its finality. Thereafter, if the amounts adjudged remain unpaid, the interest rate shall be twelve (12%) percent *per annum* from the date of finality of the decision until fully paid."<sup>[2]</sup>

### The Facts

The factual antecedents of the case are summarized by the CA in this wise:

"On February 1991, a verbal agreement was entered into between Ephraim Morillo and Mindex Resources Corporation (MINDEX for brevity) for the lease of the former's 6 x 6 ten-wheeler cargo truck for use in MINDEX's mining operations in Binaybay, Bigaan, San Teodoro, Oriental Mindoro, at the stipulated rental of 'P300.00 per hour for a minimum of eight hours a day or a total of P2,400.00 daily.' MINDEX had been paying the rentals until April 10, 1991.

"Unknown to Morillo, on April 11, 1991, the truck was burned by unidentified persons while it was parked unattended at Sitio Aras, Bigaan, San Teodoro, Oriental Mindoro, due to mechanical trouble. The findings of the Mindoro Oriental Integrated National Police in their investigation report read:

'3. On 121005H April 1991, Mr Alexander Roxas, project coordinator of MINDEX MINING CORP. reported to this office that on the morning of 12 April 1991 while he was supposed to report for his Work at their office at Sitio Tibonbon, Bigaan, San Teodoro, Oriental Mindoro, he x x x noticed that their hired 6 x 6 Ten wheeler Cargo Truck temporarily parked at Sitio Aras, Bigaan, San Teodoro, Oriental Mindoro for aplha Engine Trouble was burned on the night of April 11, 1991 by still unidentified person.

'x x x

x x x

x x x

'5. x x x Based also on the facts gathered and incident scene searched it was also found out that said 6 x 6 Ten Wheeler Cargo Truck was burned by means of using coconut leaves and as a result of which said 6 x 6 was totally burned excluding the engine which was partially damaged by still undetermined amount.'

"Upon learning of the burning incident, Morillo offered to sell the truck to MINDEX but the latter refused. Instead, it replaced the vehicle's burned tires and had it towed to a shop for repair and overhauling.

"On April 15, 1991, Morillo sent a letter to Mr. Arni Isberg, the Finance Manager of MINDEX, thru Mr. Ramoncito Gozar, Project Manager, proposing the following:

'x x x

x x x

x x x

'I have written to let you know that I am entrusting to you the said vehicle in the amount of P275,000.00 which is its cost price. I will not charge your company for the encumbrance of P76,800+ since you used it as my friendly gesture on account of the unforeseen adversity.

'In view of the tragic happening, I am asking you to pay us, in a way which will not be hard for you to settle to pay us in four installment monthly as follows:

'First payment	- April 25/91	P[1]50,000.00
'Second payment	- May 15/91	50,000.00
'Third payme(n)t	- June 15/91	50,000.00
'Fourth payme(n)t	- July 15/91	25,000.00
	TOTAL	<hr/> P275,000.00

'I promise to relinquish all the necessary documents upon full payment of said account.

'x x x

x x x

x x x

"Through Mr. Gozar, MINDEX responded by a handwritten letter to his cousin Malou (wife of Ephraim Morillo), expressing their reservations on the above demands due to their tight financial situation. However, he made the following counter offers:

'a) Pay the rental of the 6 x 6 truck (actual) in the amount of P76,000.00.

'b) Repair and overhaul the truck on our own expenses and;

'c) Return it to you on (A1) good running condition after repair.'

"Morillo replied on April 18, 1991, (1) that he will relinquish to MINDEX the damaged truck; (2) that he is amenable to receive the rental in the amount of P76,000.00; and (3) that MINDEX will pay fifty thousand pesos (P50,000.00) monthly until the balance of P275,000.00 is fully paid. It is noteworthy that except for his acceptance of the proffered P76,000.00 unpaid rentals, Morillo's stand has virtually not been changed as he merely lowered the first payment on the P275,000.00 valuation of the truck from P150,000.00 to P50,000.00.

"The parties had since remained intransigent and so on August 1991, Morillo pulled out the truck from the repair shop of MINDEX and had it repaired elsewhere for which he spent the total amount of P132,750.00."

[3] (Citations omitted)

### **Ruling of the Trial Court**

After evaluating the evidence adduced by both parties, the Regional Trial Court (RTC) found petitioner responsible for the destruction or loss of the leased 6 x 6 truck and ordered it to pay respondent (1) P76,000 as balance of the unpaid rental for the 6 x 6 truck with interest of 12 percent from June 22, 1994 (the rendition of the judgment) up to the payment of the amount; (2) P132,750 representing the costs of repair and overhaul of the said truck, with interest rate of 12 percent until fully paid; and (3) P20,000 as attorney's fees for compelling respondent to secure the services of counsel in filing his Complaint.

### **Ruling of the Court of Appeals**

The appellate court sustained the RTC's finding that petitioner was not without fault for the loss and destruction of the truck and, thus, liable therefor. The CA said:

"The burning of the subject truck was impossible to foresee, but not impossible to avoid. MINDEX could have prevented the incident by immediately towing the truck to a motor shop for the needed repair or by having it guarded day and night. Instead, the appellant just left the vehicle where its transfer case broke down. The place was about twelve

(12) kilometers away from the camp site of the appellant corporation and was sparsely populated. It was guarded only during daytime. It stayed in that place for two (2) weeks until it was burned on April 11, 1991 while its transfer case was being repaired elsewhere. It was only after it had been burned that the appellant had it towed to a repair shop.

"The appellant [respondent] was thus not free from fault for the burning of the truck. It miserably failed to overcome the presumption of negligence against it. Neither did it rescind the lease over the truck upon its burning. On the contrary, it offered to pay P76,000.00 as rentals. It did not also complete the needed repair. Hence, the appellee was forced to pull out the truck and had it repaired at his own expense. Since under the law, the 'lessee shall return the thing leased, upon the termination of the lease, just as he receive it, 'the appellant stands liable for the expenses incurred for the repair in the aggregate amount of P132,750.00."<sup>[4]</sup>

Nevertheless, the appellate court modified the Decision of the trial court. The 12 percent interest rate on the P76,000 rentals and the P132,750 repair costs, imposed by the RTC, was changed by the CA to 6 percent per annum from June 22, 1994 to the date of finality of the said Decision; and 12 percent per annum thereafter, if the amounts adjudged would remain unpaid from such date of finality until the rentals and the repair costs were fully paid. It affirmed the award of attorney's fees.

Hence, this Petition.<sup>[5]</sup>

### **Issues**

In its Memorandum, petitioner raises the following issues for the Court's consideration:

"4.1. Whether or not the Court of Appeals gravely erred in finding that petitioner failed to overcome the presumption of negligence against it considering that the facts show, as admitted by the respondent, that the burning of the truck was a fortuitous event.

"4.2. Whether or not the Court of Appeals gravely erred in affirming the decision of the trial court finding petitioner liable to pay unpaid rentals and cost of repairs.

"4.3. Whether or not the Court of Appeals also erred in affirming the decision of the trial court finding petitioner liable to pay attorney's fees."

<sup>[6]</sup>

### **This Court's Ruling**

The Petition is partly meritorious; the award of attorney's fees should be deleted.

#### **First Issue:** **Petitioner's Negligence**

Petitioner claims that the burning of the truck was a fortuitous event, for which it

should not be held liable pursuant to Article 1174<sup>[7]</sup> of the Civil Code. Moreover, the letter of respondent dated April 15, 1991, stating that the burning of the truck was an “unforeseen adversity,” was an admission that should exculpate the former from liability.

We are not convinced. Both the RTC and the CA found petitioner negligent and thus liable for the loss or destruction of the leased truck. True, both parties may have suffered from the burning of the truck; however, as found by both lower courts, the negligence of petitioner makes it responsible for the loss. Well-settled is the rule that factual findings of the trial court, particularly when affirmed by the Court of Appeals, are binding on the Supreme Court. Contrary to its allegations, petitioner has not adequately shown that the RTC and the CA overlooked or disregarded significant facts and circumstances that, when considered, would alter the outcome of the disposition.<sup>[8]</sup> Article 1667 of the Civil Code<sup>[9]</sup> holds lessees responsible for the deterioration or loss of the thing leased, unless they prove that it took place without their fault.

### **Fortuitous Event**

In order for a fortuitous event to exempt one from liability, it is necessary that one has committed no negligence or misconduct that may have occasioned the loss.<sup>[10]</sup> An act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of such a loss. One’s negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability. When the effect is found to be partly the result of a person’s participation -- whether by active intervention, neglect or failure to act -- the whole occurrence is humanized and removed from the rules applicable to acts of God.<sup>[11]</sup>

This often-invoked doctrine of “fortuitous event” or “*caso fortuito*” has become a convenient and easy defense to exculpate an obligor from liability. To constitute a fortuitous event, the following elements must concur: (a) the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must be independent of human will; (b) it must be impossible to foresee the event that constitutes the *caso fortuito* or, if it can be foreseen, it must be impossible to avoid; (c) the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury or loss.<sup>[12]</sup>

Article 1174 of the Civil Code states that no person shall be responsible for a fortuitous event that could not be foreseen or, though foreseen, was inevitable. In other words, there must be an exclusion of human intervention from the cause of injury or loss.<sup>[13]</sup>

A review of the records clearly shows that petitioner failed to exercise reasonable care and caution that an ordinarily prudent person would have used in the same situation. Witness Alexander Roxas testified how petitioner fell short of ordinary diligence in safeguarding the leased truck against the accident, which could have been avoided in the first place. Pertinent portions of his testimony are reproduced hereunder: