

THIRTEENTH DIVISION

[CA-G.R. CV No. 101898, November 17, 2014]

**RITEÑANS DEVELOPMENT CORPORATION, PLAINTIFF-APPELLEE,
VS. BPI/MS INSURANCE CORPORATION, DEFENDANT-
APPELLANT.**

DECISION

LIBREA-LEAGOGO, J.:

Before this Court is an appeal under Rule 41 of the Rules of Court, assailing the Decision^[1] dated 06 December 2013 of the Regional Trial Court, Third Judicial Region, Branch 47, City of San Fernando, Pampanga, in the case entitled "*Riteñans Development Corporation v. BPI/MS Insurance Corporation*," docketed as *Civil Case No. 13600*, which ruled in favor of plaintiff-appellee.

Defendant-appellant filed its Appellants' Brief^[2] dated 29 May 2014. Plaintiff-appellee then belatedly filed its Appellee's Brief^[3] dated 12 September 2014, which was admitted in the Resolution^[4] dated 26 September 2014. Defendant-appellant filed a Reply Brief^[5] dated 27 October 2014. Thus, the case is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint^[6] dated 20 August 2008 for specific performance and damages was filed by plaintiff Riteñans Development Corporation against defendant BPI/MS Insurance Corporation, docketed as *Civil Case No. 13600*, before the Regional Trial Court, City of San Fernando, Pampanga, and raffled off to Branch 48.

It was alleged, *inter alia*, that: it is a domestic corporation duly organized and existing under Philippine laws; it is the registered owner of a Toyota Camry with Motor No. 2AZ0907079, Chassis No. ACV309000111, and Plate No. VMC-909; the said motor vehicle was carnapped on 16 May 2007 in front of KFC Dau Spillway in Mabalacat, Pampanga while it was on loan to businessman Beny Nanquil and his driver Ramy Ramos, as evidenced by a Police Incident Report; it was covered by Motor Policy No. 200PC6055399-PCP and was insured against own damage or theft for Php743,000.00 secured from the Insurance House of Pampanga Agency Corporation, an authorized agent of BPI/MS Insurance Corporation; payment of its premium was paid as shown in the official receipt issued by defendant; the fact of loss was immediately relayed to defendant's authorized agent who assured them that if within six (6) months the vehicle is not recovered, proper indemnification shall be settled subject to the presentation of a Certificate of Non-Recovery from the proper authorities; on 04 December 2007, a Certificate of Non-Recovery for Carnapped Motor Vehicle under Control No. OADI-07-12131265 was issued by Philippine National Police (PNP), Traffic Management Group in Camp Crame, Quezon

City; on 13 December 2007, all the documents required by the agent were forwarded to defendant but the latter did not reply; despite repeated follow-ups including a demand letter dated 15 May 2008, defendant still refused to settle the policy coverage for own damage or theft; it was constrained to litigate and secure the services of counsel entitling it to attorney's fee of twenty five (25%) percent of whatever amount to be adjudged to its favor, litigation expenses in the amount of Php35,000.00, and costs of suit.

Defendant filed its Answer^[7] dated 24 September 2008 and raised as affirmative defenses and counterclaim, that: the RTC has no jurisdiction over the subject matter of the Complaint as the same is an unsigned pleading; its verification does not conform with the Rules of Court as the affiant therein did not state that he read the Complaint, thus it should be dismissed outright; plaintiff has no valid cause of action because as stated in the Complaint, the insured unit was on loan to businessman Beny Nanquil and his driver Ramy Ramos; such fact was not made known to it, and the driver is not plaintiff's authorized driver; there was unauthorized use of the insured unit and plaintiff violated its insurance agreement, thus, the policy is not liable for the alleged loss; without admitting liability under the policy, plaintiff failed to prove the fact of loss because in the documents submitted to them it appears that the alleged loss occurred in Dau, Mabalacat, Pampanga while in the driver's affidavit, the same occurred in Balibago, Angeles City; it never made an assurance for the settlement of plaintiff's claim; plaintiff also failed to comply with the terms and conditions of the insurance agreement as plaintiff failed to make the alleged driver of the insured unit available for interview to ascertain the true facts of the alleged loss; as counterclaim, it is entitled to recover moral damages in the amount of Php100,000.00 as it suffered besmirched reputation in the insurance industry, Php50,000.00 as attorney's fees plus the sum of Php3,500.00 for every court appearance of counsel, Php50,000.00 as litigation expenses, and costs of suit.

Plaintiff filed a Reply^[8] dated 17 October 2008.

Defendant filed its Pre-Trial Brief^[9] dated 07 November 2008. Plaintiff also filed its Pre-trial Brief^[10] dated 28 November 2008.

Per Mediator's Report^[11] dated 08 January 2009, the mediation failed. In an Order^[12] dated 16 January 2009, the case was set for Judicial Dispute Resolution (JDR). For failed judicial dispute resolution, the trial court issued an Order^[13] dated 04 March 2009 for the entire records of the case to be forwarded to the Office of the Executive Judge for reraffle. The case was reraffled to Branch 47.^[14]

Pre-trial conference was held and a Pre-Trial Order^[15] dated 05 May 2009 was issued which stated, *inter alia*, that defendant admitted: the capacity of the parties to sue and be sued; the ownership of Toyota Camry with Plate No. VMC-909 and its registration in the name of plaintiff corporation; the existence of Motor Vehicle Policy No. 200PC6055399-PCP subject to the qualification of proof of the amount of coverage; the effectivity of the said policy covers the period from 12 September 2006 to 12 September 2007; the existence of the Certificate of Non-Recovery, and the Alarm Report dated 16 May 2007; a demand was made by plaintiff on the defendant; and no written response was made by the defendant.

In its Order^[16] dated 19 August 2009, the trial court denied the motion to declare plaintiff non-suited.

Trial ensued.

Plaintiff presented its witnesses Dante Torres ("Torres," for brevity), its Operations Manager, and Beny Nanquil ("Nanquil," for brevity). It filed its Formal Offer of Exhibits^[17] dated 14 February 2011, offering its Exhibits "A" to "G" with submarkings, to which defendant filed a Comment/Objection^[18] dated 16 February 2011. In the Order^[19] dated 16 March 2011, the trial court admitted the plaintiff's Exhibits "A" to "G."

Defendant presented Victor Sagcal ("Sagcal," for brevity) and Arsenio Canlas ("Canlas," for brevity) as its witnesses. It filed a Formal Offer of Evidence^[20] dated 23 March 2012, offering its Exhibits "1" to "10" with submarkings, to which plaintiff filed its Comment^[21] dated 20 August 2012. In the Order^[22] dated 24 August 2012, the trial court admitted the defendant's Exhibits "1" to "10."

Defendant filed its Memorandum^[23] dated 12 March 2013.

The trial court rendered its Decision^[24] dated 06 December 2013, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against the defendant, ordering the latter to pay the former
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1) Php743,000.00 plus the legal rate of interest from September 1, 2008, the date the complaint was filed, until the principal amount is fully paid;

2) Php20,000.00 as attorney's fees and

Cost of suits.

SO ORDERED."^[25]

Defendant filed a Notice of Appeal^[26] dated 17 December 2013, which was given due course in the Order^[27] dated 09 January 2014.

Hence, this appeal.

RULING

Defendant-appellant assigns the following errors, viz:

"I. THAT THE COURT A QUO ERRED IN HOLDING THAT THE TESTIMONIES OF DANTE TORRES AND BENY NANQUIL ARE

CONSIDERED PROOF OF THE FACT OF LOSS OF THE INSURED VEHICLE

II. THAT THE COURT A QUO ERRED IN HOLDING THAT THE INCONSISTENCIES IN THE PLACE WHERE THE CARNAPPING HAPPENED WAS POSSIBLY DUE TO AN ERROR COMMITTED BY RAMY RAMOS AS SUGGESTED BY COUNSEL FOR PLAINTIFF

III. THAT THE COURT A QUO ERRED IN NOT FINDING THAT PLAINTIFF HAS NO VALID CAUSE OF ACTION

IV. THAT THE COURT A QUO ERRED IN NOT CONSIDERING THE COMPLAINT AS A MERE SCRAP OF PAPER

V. THAT THE COURT A QUO ERRED IN NOT GRANTING DEFENDANT-APPELLANT'S COUNTERCLAIM"^[28]

Defendant-appellant contends, *inter alia*, that: nothing in the testimonies of plaintiff-appellee's witnesses proved the loss of the insured vehicle; it is plaintiff-appellee's duty to prove the fact of loss of the insured vehicle as it is the one claiming for indemnity; in the Police Alarm Report the alleged loss happened in front of KFC Dau Spillway, Mabalacat Pampanga, while the Affidavit of the driver, Ramy Mendoza Ramos ("Ramos," for brevity) states the place of loss as KFC, Balibago, Angeles City; in the driver's affidavit, it was stated that "I was tasked by my manager of Riteñans Development Corporation to fetch one of their client at Balibago, Angeles City" and likewise stated in the Secretary's Certificate that "Ramy Ramos, our company driver, whose signature appear hereunder, be, as hereby authorized by the company to file the alarm sheet and complaint sheet at T.M.G. Camp Olivas," clearly contradict the stipulation of the parties during the pre-trial that Ramos is not an employee of plaintiff-appellee; Ramos was not made available by plaintiff-appellee for interview, and neither was his driver's license produced; the trial court opined that as regards the inconsistencies in the place where the carnapping happened, it is possible that Ramos inadvertently committed an error in stating the wrong city since he is not a resident of either Angeles City or Mabalacat City but of Olongapo City; this is not only contrary to the rule that the court should decide a case on the basis of evidence presented before it and not on the basis of possibility; the place of loss not having been proven, the only logical and ordinary conclusion is that the alleged loss did not occur; plaintiff-appellee was not able to make a *prima facie* case in its favor because Ramos was not authorized to drive the insured unit; the "authorized driver" clause is defined in the policy; Ramos cannot be considered as an authorized driver because the "insured" is plaintiff-appellee; the phrase "on the insured's order or permission" is likewise inapplicable to Ramos because as testified to by Nanquil, to whom the insured vehicle was loaned, he hired Ramos and he instructed the latter to drive the insured vehicle to send off a foreign client who was about to leave the Philippines; their failure to produce Ramos' driver's license is sufficient to defeat its claim as provided for in the authorized driver clause which is a condition precedent to defendant-appellant's liability; plaintiff-appellee has no valid cause of action because there was no evidence to show that it denied the former's claim; even assuming that it has, the instant complaint is premature; it is not liable under the policy to indemnify plaintiff-appellee because the alleged loss did not actually happen and plaintiff-appellee did not comply with the terms and conditions of the Policy and/or violated the same; it raised in its answer that the trial court has no

jurisdiction over the subject matter of the claim as the Complaint was not properly verified in accordance with the Rules of Court, hence, an unsigned pleading and a mere scrap of paper; it was unnecessarily drawn to litigation and to engage and retain the services of counsel by reason of the baseless Complaint which was filed in utter bad faith; and it suffered besmirched reputation in the insurance industry sufficient to grant its counterclaim.

Plaintiff-appellee ripostes, *inter alia*, that: there is no cogent reason to reverse the Decision of the trial court; the testimonies of prosecution witnesses are sufficient proof of the fact of loss of the insured vehicle as the trial court found their testimonies to be credible and trustworthy which findings are entitled to highest respect and must not be disturbed on appeal; Sagcal, the insurance adjuster, failed to dispute the fact that the vehicle was carnapped; from his investigation he was unable to locate the vehicle nor was he able to prove that the car was not stolen; the Police Alarm Report from the Mabalacat Municipal Police Station and the Certificate of Non-recovery of Carnapped Vehicle issued by the, PNP, Traffic Management Group (TMG), showing the narration of incident of loss of the vehicle and its non-recovery, are admissible in evidence to support the fact of loss; the alleged inconsistency in the place where the carnapping happened was due to the error committed by Ramos because he was unfamiliar with the place where the car was stolen; such inconsistency is insignificant to refute the fact of loss, what is important is the fact that the car was stolen; even the TMG certified to the non-recovery of the vehicle; defendant-appellant failed to disprove the fact of loss as it failed to produce the vehicle as evidence; the statement that Ramos was a company driver of plaintiff-appellee in the Secretary's Certificate was duly explained by Torres; while Ramos was not an employee of plaintiff-appellee, his employer Nanquil was a partner of plaintiff-appellee who brings foreign clients to inspect the subdivision sites owned by the plaintiff-appellee; such inconsistencies are minor or trivial which do not affect the credibility of the witness; defendant cannot evade the liability by raising the authorized driver clause when its liability falls under the theft clause; and it is ridiculous for an insurance to impose restrictions and this was never the intention of the parties, nor was it stipulated upon the insurance policy.

On procedural matter, (i)t is settled that the requirements of verification and certification against forum shopping are not jurisdictional. Verification is required to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative. Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, and is substantially complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct.

[29] Indeed, the absence of a verification (or a defect therein) is not jurisdictional, but only a formal defect, which does not of itself justify a court in refusing to allow and act on a case. [30]

Stripped of verbiage, the pivotal issue in this case is whether or not the trial court erred in ordering defendant-appellant to pay the plaintiff-appellee its insurance claim.

We find in the negative.