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SECOND DIVISION

[G.R. No. 179469, February 15, 2012]

C.F. SHARP & CO. INC. AND JOHN J. ROCHA, PETITIONERS, VS. PIONEER INSURANCE & SURETY CORPORATION, WILFREDO C. AGUSTIN AND HERNANDO G. MINIMO, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

Whether a local private employment agency may be held liable for breach of contract for failure to deploy a seafarer, is the bone of contention in this case.

Assailed in this petition for review are the Decision[1] dated 30 October 2003 and the 29 August 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 53336 finding petitioners C.F. Sharp Co. Inc. (C.F. Sharp) and John J. Rocha (Rocha) liable for damages.

Responding to a newspaper advertisement of a job opening for sandblasters and painters in Libya, respondents Wilfredo C. Agustin and Hernando G. Minimo applied with C.F. Sharp sometime in August 1990. After passing the interview, they were required to submit their passports, seaman's book, National Bureau of Investigation clearance, employment certificates, certificates of seminars attended, and results of medical examination. Upon submission of the requirements, a Contract of Employment was executed between respondents and C.F. Sharp. Thereafter, respondents were required to attend various seminars, open a bank account with the corresponding allotment slips, and attend a pre-departure orientation. They were then advised to prepare for immediate deployment and to report to C.F. Sharp to ascertain the schedule of their deployment.

After a month, respondents were yet to be deployed prompting them to request for the release of the documents they had submitted to C.F. Sharp. C.F. Sharp allegedly refused to surrender the documents which led to the filing of a complaint by respondents before the Philippine Overseas Employment Administration (POEA) on 21 January 1991.

On 30 October 1991, POEA issued an Order finding C.F. Sharp guilty of violation of Article 34(k) of the Labor Code, which makes it unlawful for any entity "to withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations." Consequently, C.F. Sharp's license was suspended until the return of the disputed documents to respondents. POEA likewise declared that it has no jurisdiction to adjudicate the monetary claims of respondents.

On 10 March 1995, respondents filed a Complaint for breach of contract and

damages against C.F. Sharp and its surety, Pioneer Insurance and Surety Corporation (Pioneer Insurance), before the Regional Trial Court (RTC) of Pasay City. Respondents claimed that C.F. Sharp falsely assured them of deployment and that its refusal to release the disputed documents on the ground that they were already bound by reason of the Contract of Employment, denied respondents of employment opportunities abroad and a guaranteed income. Respondents also prayed for damages. Pioneer Insurance filed a cross claim against C.F. Sharp and John J. Rocha, the executive vice-president of C.F. Sharp, based on an Indemnity Agreement which substantially provides that the duo shall jointly and severally indemnify Pioneer Insurance for damages, losses, and costs which the latter may incur as surety. The RTC rendered judgment on 27 June 1996 favoring respondents, to wit:

> WHEREFORE, plaintiffs' causes of action having been proved with a preponderance of evidence, judgment is hereby ordered as follows:
>
> a. Declaring the non-deployment of plaintiffs and the refusal to release documents as breach of contract;
> b. By way of compensatory damages, awarding $450 per month and $439 overtime per month, which should have been received by plaintiffs from other employers, making a joint and solidary obligation on the part of the two defendants – C.F. Sharp and Pioneer for the period covered by the employment contracts;
> c. Ordering each defendant to pay each plaintiff P50,000.00 as moral damages and another P50,000.00 each as exemplary damages;
> d. Ordering defendants to share in the payment to plaintiffs of P50,000.00 attorney's fees;
> e. Defendants to pay litigation expenses and costs of suit.[2]

The trial court ruled that there was a violation of the contract when C.F. Sharp failed to deploy and release the papers and documents of respondents, hence, they are entitled to damages. The trial court likewise upheld the cause of action of respondents against Pioneer Insurance, the former being the actual beneficiaries of the surety bond.

On appeal, C.F. Sharp and Rocha raise a jurisdictional issue — that the RTC has no jurisdiction over the instant case pursuant to Section 4(a) of Executive Order No. 797 which vests upon the POEA the jurisdiction over all cases, including money claims, arising out of or by virtue of any contract involving workers for overseas employment. C.F. Sharp and Rocha refuted the findings of the trial court and maintained that the perfection and effectivity of the Contract of Employment depend upon the actual deployment of respondents.

The Court of Appeals upheld the jurisdiction of the trial court by ruling that petitioners are now estopped from raising such question because they have actively participated in the proceedings before the trial court. The Court of Appeals further held that since there is no perfected employment contract between the parties, it is the RTC and not the POEA, whose jurisdiction pertains only to claims arising from contracts involving Filipino seamen, which has jurisdiction over the instant case.

Despite the finding that no contract was perfected between the parties, the Court of Appeals adjudged C.F. Sharp and Rocha liable for damages, to wit:

> WHEREFORE, the Appeal of C.F. Sharp Co Inc. and John J. Rocha is PARTIALLY GRANTED only insofar as We declare that there is no breach of contract because no contract of employment was perfected. However, We find appellants C.F. Sharp Co. Inc. and John J. Rocha liable to plaintiff-appellees for damages pursuant to Article 21 of the Civil Code and award each plaintiff-appellees temperate damages amounting to P100,000.00, and moral damages in the increased amount of P100,000.00. The award of exemplary damages and attorney's fees amounting to P50,000.00, respectively, is hereby affirmed.[3]

The Court of Appeals limited the liability of Pioneer Insurance to the amount of P150,000.00 pursuant to the Contract of Suretyship between C.F. Sharp and Pioneer Insurance.

Rocha filed the instant petition on the submission that there is no basis to hold him liable for damages under Article 21 of the Civil Code because C.F. Sharp has signified its intention to return the documents and had in fact informed respondents that they may, at any time of the business day, withdraw their documents. Further, respondents failed to establish the basis for which they are entitled to moral damages. Rocha refuted the award of exemplary damages because the act of requiring respondents to sign a quitclaim prior to the release of their documents could not be considered bad faith. Rocha also questions the award of temperate damages on the ground that the act of withholding respondents' documents could not be considered "chronic and continuing."[4]

Right off, insofar as Pioneer Insurance is concerned, the petition should be dismissed against it because the ruling of the Court of Appeals limited its liability to P150,000.00 was not assailed by Rocha, hence the same has now attained finality.

Before us, respondents maintain that they are entitled to damages under Article 21 of the Civil Code for C.F. Sharp's unjustified refusal to release the documents to them and for requiring them to sign a quitclaim which would effectively bar them from seeking redress against petitioners. Respondents justify the award of other damages as they suffered pecuniary losses attributable to petitioner's malice and bad faith.

In his Reply, Rocha introduced a new argument, *i.e.*, that he should not be held jointly liable with C.F. Sharp considering that the company has a separate personality. Rocha argues that there is no showing in the Complaint that he had participated in the malicious act complained. He adds that his liability only stems from the Indemnity Agreement with Pioneer Insurance and does not extend to respondents.

Records disclose that Rocha was first impleaded in the case by Pioneer Insurance. Pioneer Insurance, as surety, was sued by respondents together with C.F. Sharp. Pioneer Insurance in turn filed a third party complaint against Rocha on the basis of

an Indemnity Agreement whereby he bound himself to indemnify and hold harmless Pioneer Insurance from and against any and all damages which the latter may incur in consequence of having become a surety.[5] The third party complaint partakes the nature of a cross-claim.

C.F. Sharp, as defendant-appellant and Rocha, as third-party defendant-appellant, filed only one brief before the Court of Appeals essentially questioning the declaration of the trial court that non-deployment is tantamount to breach of contract and the award of damages. The Court of Appeals found them both liable for damages. Both C.F. Sharp and Rocha sought recourse before this Court via a Motion for Extension of Time (To File a Petition for Review) on 19 September 2007.[6] In the Petition for Review, however, C.F. Sharp was noticeably dropped as petitioner. Rocha maintains essentially the same argument that he and C.F. Sharp were wrongfully adjudged liable for damages.

It was only in its Reply dated 25 March 2008 that Rocha, through a new representation, suddenly forwarded the argument that he should not be held liable as an officer of C.F. Sharp. It is too late in the day for Rocha to change his theory. It is doctrinal that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[7] More so in this case, where Rocha introduced a new theory at the Reply stage. Disingenuousness may even be indicated by the sudden exclusion of the name of C.F. Sharp from the main petition even as Rocha posited arguments not just for himself and also in behalf of C.F. Sharp.

The core issue pertains to damages.

The bases of the lower courts' award of damages differ. In upholding the perfection of contract between respondents and C.F. Sharp, the trial court stated that the unjustified failure to deploy and subsequently release the documents of respondents entitled them to compensatory damages, among others. Differently, the appellate court found that no contract was perfected between the parties that will give rise to a breach of contract. Thus, the appellate court deleted the award of actual damages. However, it adjudged other damages against C.F. Sharp for its unlawful withholding of documents from respondents.

We sustain the trial court's ruling.

On the issue of whether respondents are entitled to relief for failure to deploy them, the RTC ruled in this wise:

> The contract of employment entered into by the plaintiffs and the defendant C.F. Sharp is an actionable document, the same contract having the essential requisites for its validity. It is worthy to note that there are three stages of a contract: (1) preparation, conception, or generation which is the period of negotiation and bargaining ending at the moment of agreement of the parties. (2) Perfection or birth of the

> contract, which is the moment when the parties come to agree on the terms of the contract. (3) Consummation or death, which is the fulfillment or performance of the terms agreed upon in the contract.
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> Hence, it is imperative to know the stage reached by the contract entered into by the plaintiffs and C.F. sharp. Based on the testimonies of the witnesses presented in this Court, there was already a perfected contract between plaintiffs and defendant C.F. Sharp. Under Article 1315 of the New Civil Code of the Philippines, it states that:
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> x x x x
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> Thus, when plaintiffs signed the contract of employment with C.F. Sharp (as agent of the principal WB Slough) consequently, the latter is under obligation to deploy the plaintiffs, which is the natural effect and consequence of the contract agreed by them.[8]

We agree.

As correctly ruled at the trial, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[9]

Under Article 1315 of the Civil Code, a contract is perfected by mere consent and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[10]

An employment contract, like any other contract, is perfected at the moment (1) the parties come to agree upon its terms; and (2) concur in the essential elements thereof: (a) consent of the contracting parties, (b) object certain which is the subject matter of the contract and (c) cause of the obligation.[11]

We have scoured through the Contract of Employment and we hold that it is a perfected contract of employment. We reproduce below the terms of the Contract of Employment for easy reference:

WITNESSETH

> That the Seafarer shall be employed on board under the following terms and conditions:
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> 1.1 Duration of Contract: 3 month/s
> 1.2 Position: SANDBLASTER/PAINTER
> 1.3 Basic Monthly Salary: $450.00 per month
> 1.4 Living Allowances: $0.00 per month