

SECOND DIVISION

[G.R. No. 179419, January 12, 2011]

DURBAN APARTMENTS CORPORATION, DOING BUSINESS UNDER THE NAME AND STYLE OF CITY GARDEN HOTEL, PETITIONER, VS. PIONEER INSURANCE AND SURETY CORPORATION, RESPONDENT.

DECISION

NACHURA, J.:

For review is the Decision ^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 86869, which affirmed the decision ^[2] of the Regional Trial Court (RTC), Branch 66, Makati City, in Civil Case No. 03-857, holding petitioner Durban Apartments Corporation solely liable to respondent Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's (See's) vehicle.

The facts, as found by the CA, are simple.

On July 22, 2003, [respondent] Pioneer Insurance and Surety Corporation x x x, by right of subrogation, filed [with the RTC of Makati City] a Complaint for Recovery of Damages against [petitioner] Durban Apartments Corporation, doing business under the name and style of City Garden Hotel, and [defendant before the RTC] Vicente Justimbaste x x x. [Respondent averred] that: it is the insurer for loss and damage of Jeffrey S. See's [the insured's] 2001 Suzuki Grand Vitara x x x with Plate No. XBH-510 under Policy No. MC-CV-HO-01-0003846-00-D in the amount of P1,175,000.00; on April 30, 2002, See arrived and checked in at the City Garden Hotel in Makati corner Kalayaan Avenues, Makati City before midnight, and its parking attendant, defendant x x x Justimbaste got the key to said Vitara from See to park it[. O]n May 1, 2002, at about 1:00 o'clock in the morning, See was awakened in his room by [a] telephone call from the Hotel Chief Security Officer who informed him that his Vitara was carnapped while it was parked unattended at the parking area of Equitable PCI Bank along Makati Avenue between the hours of 12:00 [a.m.] and 1:00 [a.m.]; See went to see the Hotel Chief Security Officer, thereafter reported the incident to the Operations Division of the Makati City Police Anti-Carnapping Unit, and a flash alarm was issued; the Makati City Police Anti-Carnapping Unit investigated Hotel Security Officer, Ernesto T. Horlador, Jr. x x x and defendant x x x Justimbaste; See gave his Sinumpaang Salaysay to the police investigator, and filed a Complaint Sheet with the PNP Traffic Management Group in Camp Crame, Quezon City; the Vitara has not yet been recovered since July 23, 2002 as evidenced by a Certification of Non- Recovery issued by the PNP TMG; it paid the P1,163,250.00 money

claim of See and mortgagee ABN AMRO Savings Bank, Inc. as indemnity for the loss of the Vitara; the Vitara was lost due to the negligence of [petitioner] Durban Apartments and [defendant] Justimbaste because it was discovered during the investigation that this was the second time that a similar incident of carjacking happened in the valet parking service of [petitioner] Durban Apartments and no necessary precautions were taken to prevent its repetition; [petitioner] Durban Apartments was wanting in due diligence in the selection and supervision of its employees particularly defendant x x x Justimbaste; and defendant x x x Justimbaste and [petitioner] Durban Apartments failed and refused to pay its valid, just, and lawful claim despite written demands.

Upon service of Summons, [petitioner] Durban Apartments and [defendant] Justimbaste filed their Answer with Compulsory Counterclaim alleging that: See did not check in at its hotel, on the contrary, he was a guest of a certain Ching Montero x x x; defendant x x x Justimbaste did not get the ignition key of See's Vitara, on the contrary, it was See who requested a parking attendant to park the Vitara at any available parking space, and it was parked at the Equitable Bank parking area, which was within See's view, while he and Montero were waiting in front of the hotel; they made a written denial of the demand of [respondent] Pioneer Insurance for want of legal basis; valet parking services are provided by the hotel for the convenience of its customers looking for a parking space near the hotel premises; it is a special privilege that it gave to Montero and See; it does not include responsibility for any losses or damages to motor vehicles and its accessories in the parking area; and the same holds true even if it was See himself who parked his Vitara within the premises of the hotel as evidenced by the valet parking customer's claim stub issued to him; the carjacker was able to open the Vitara without using the key given earlier to the parking attendant and subsequently turned over to See after the Vitara was stolen; defendant x x x Justimbaste saw the Vitara speeding away from the place where it was parked; he tried to run after it, and blocked its possible path but to no avail; and See was duly and immediately informed of the carjacking of his Vitara; the matter was reported to the nearest police precinct; and defendant x x x Justimbaste, and Horlador submitted themselves to police investigation.

During the pre-trial conference on November 28, 2003, counsel for [respondent] Pioneer Insurance was present. Atty. Monina Lee x x x, counsel of record of [petitioner] Durban Apartments and Justimbaste was absent, instead, a certain Atty. Nestor Mejia appeared for [petitioner] Durban Apartments and Justimbaste, but did not file their pre-trial brief.

On November 5, 2004, the lower court granted the motion of [respondent] Pioneer Insurance, despite the opposition of [petitioner] Durban Apartments and Justimbaste, and allowed [respondent] Pioneer Insurance to present its evidence *ex parte* before the Branch Clerk of Court.

See testified that: on April 30, 2002, at about 11:30 in the evening, he drove his Vitara and stopped in front of City Garden Hotel in Makati

Avenue, Makati City; a parking attendant, whom he had later known to be defendant x x x Justimbaste, approached and asked for his ignition key, told him that the latter would park the Vitara for him in front of the hotel, and issued him a valet parking customer's claim stub; he and Montero, thereafter, checked in at the said hotel; on May 1, 2002, at around 1:00 in the morning, the Hotel Security Officer whom he later knew to be Horlador called his attention to the fact that his Vitara was carnapped while it was parked at the parking lot of Equitable PCI Bank which is in front of the hotel; his Vitara was insured with [respondent] Pioneer Insurance; he together with Horlador and defendant x x x Justimbaste went to Precinct 19 of the Makati City Police to report the carnapping incident, and a police officer came accompanied them to the Anti-Carnapping Unit of the said station for investigation, taking of their sworn statements, and flashing of a voice alarm; he likewise reported the said incident in PNP TMG in Camp Crame where another alarm was issued; he filed his claim with [respondent] Pioneer Insurance, and a representative of the latter, who is also an adjuster of Vesper Insurance Adjusters-Appraisers [Vesper], investigated the incident; and [respondent] Pioneer Insurance required him to sign a Release of Claim and Subrogation Receipt, and finally paid him the sum of P1,163,250.00 for his claim.

Ricardo F. Red testified that: he is a claims evaluator of [petitioner] Pioneer Insurance tasked, among others, with the receipt of claims and documents from the insured, investigation of the said claim, inspection of damages, taking of pictures of insured unit, and monitoring of the processing of the claim until its payment; he monitored the processing of See's claim when the latter reported the incident to [respondent] Pioneer Insurance; [respondent] Pioneer Insurance assigned the case to Vesper who verified See's report, conducted an investigation, obtained the necessary documents for the processing of the claim, and tendered a settlement check to See; they evaluated the case upon receipt of the subrogation documents and the adjuster's report, and eventually recommended for its settlement for the sum of P1,163,250.00 which was accepted by See; the matter was referred and forwarded to their counsel, R.B. Sarajan & Associates, who prepared and sent demand letters to [petitioner] Durban Apartments and [defendant] Justimbaste, who did not pay [respondent] Pioneer Insurance notwithstanding their receipt of the demand letters; and the services of R.B. Sarajan & Associates were engaged, for P100,000.00 as attorney's fees plus P3,000.00 per court appearance, to prosecute the claims of [respondent] Pioneer Insurance against [petitioner] Durban Apartments and Justimbaste before the lower court.

Ferdinand Cacnio testified that: he is an adjuster of Vesper; [respondent] Pioneer Insurance assigned to Vesper the investigation of See's case, and he was the one actually assigned to investigate it; he conducted his investigation of the matter by interviewing See, going to the City Garden Hotel, required subrogation documents from See, and verified the authenticity of the same; he learned that it is the standard procedure of the said hotel as regards its valet parking service to assist their guests as soon as they get to the lobby entrance, park the cars for their guests,

and place the ignition keys in their safety key box; considering that the hotel has only twelve (12) available parking slots, it has an agreement with Equitable PCI Bank permitting the hotel to use the parking space of the bank at night; he also learned that a Hyundai Starex van was carnapped at the said place barely a month before the occurrence of this incident because Liberty Insurance assigned the said incident to Vespers, and Horlador and defendant x x x Justimbaste admitted the occurrence of the same in their sworn statements before the Anti-Carnapping Unit of the Makati City Police; upon verification with the PNP TMG [Unit] in Camp Crame, he learned that See's Vitara has not yet been recovered; upon evaluation, Vesper recommended to [respondent] Pioneer Insurance to settle See's claim for P1,045,750.00; See contested the recommendation of Vesper by reasoning out that the 10% depreciation should not be applied in this case considering the fact that the Vitara was used for barely eight (8) months prior to its loss; and [respondent] Pioneer Insurance acceded to See's contention, tendered the sum of P1,163,250.00 as settlement, the former accepted it, and signed a release of claim and subrogation receipt.

The lower court denied the Motion to Admit Pre-Trial Brief and Motion for Reconsideration filed by [petitioner] Durban Apartments and Justimbaste in its Orders dated May 4, 2005 and October 20, 2005, respectively, for being devoid of merit. [3]

Thereafter, on January 27, 2006, the RTC rendered a decision, disposing, as follows:

WHEREFORE, judgment is hereby rendered ordering [petitioner Durban Apartments Corporation] to pay [respondent Pioneer Insurance and Surety Corporation] the sum of P1,163,250.00 with legal interest thereon from July 22, 2003 until the obligation is fully paid and attorney's fees and litigation expenses amounting to P120,000.00.

SO ORDERED. [4]

On appeal, the appellate court affirmed the decision of the trial court, viz.:

WHEREFORE, premises considered, the Decision dated January 27, 2006 of the RTC, Branch 66, Makati City in Civil Case No. 03-857 is hereby AFFIRMED insofar as it holds [petitioner] Durban Apartments Corporation solely liable to [respondent] Pioneer Insurance and Surety Corporation for the loss of Jeffrey See's Suzuki Grand Vitara.

SO ORDERED. [5]

Hence, this recourse by petitioner.

The issues for our resolution are: