

## FIRST DIVISION

[ G.R. No. 169293, October 05, 2011 ]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
TRAVERSE DEVELOPMENT CORPORATION AND CENTRAL SURETY  
AND INSURANCE COMPANY, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> of the September 30, 2004 **Decision**<sup>[2]</sup> and August 11, 2005 **Resolution**<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 65311, which affirmed the November 24, 1998 **Decision**<sup>[4]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 87, in **Civil Case No. Q-37497**, as modified by its February 1, 1999 **Order**.<sup>[5]</sup>

The facts are simple and straightforward.

The Development of the Philippines (DBP)-Tarlac Branch granted a "Real Estate Loan" of ₱910,000.00 to Traverse Development Corporation (Traverse) for the construction of its three-storey commercial building at Tañedo St., Tarlac City. To secure the payment of this loan, Traverse constituted a mortgage on the land on which the building was to be built on July 21, 1980.<sup>[6]</sup> Among the conditions imposed by DBP in the mortgage contract was Traverse's acquisition of an insurance coverage for an amount not less than the loan, to be endorsed in DBP's favor.<sup>[7]</sup>

From 1980 to 1981, Traverse submitted to DBP three policies in accordance with the insurance condition in the mortgage contract. The last of these three was FGU Policy No. 6246, in the amount of ₱1 Million, for the period of one year, from May 7, 1981 to May 7, 1982.<sup>[8]</sup>

On May 6, 1982, FGU Insurance Corporation (FGU) renewed Traverse's Fire Insurance Policy for another year, from May 7, 1982 to May 7, 1983, for the same amount of ₱1 Million, under Policy No. 61146.<sup>[9]</sup> However, as DBP had already transferred the building's insurance to Central Surety & Insurance Company (Central), for the same terms, under Fire Insurance Policy No. TAR 1056 (Policy No. TAR 1056), issued on May 7, 1982, it returned the FGU Policy to Traverse. <sup>[10]</sup>

On August 9, 1982, during the effectivity of Policy No. TAR 1056, a fire of undetermined origin razed and gutted Traverse's building. The following day, Traverse informed Central of the mishap and requested it to immediately conduct the necessary inspection, evaluation, and investigation.<sup>[11]</sup>

On September 7, 1982, Traverse submitted to Central written proof of the loss

sustained by its building, together with its claim in the amount of ₱1 Million. On November 6, 1982, Central proposed to settle Traverse's claim on the basis of cost of repairs of the affected parts of the building for ₱230,748.00.<sup>[12]</sup> Believing that this was highly inequitable and unreasonable, Traverse denied such proposal.

Having failed to arrive at a settlement, Traverse, on February 28, 1983, filed a Complaint<sup>[13]</sup> before the RTC, against Central and DBP for payment of its claim and damages.

Traverse averred that it was obvious from the beginning that Central was unable or unwilling to fulfill its liability under Policy No. TAR 1056. Traverse alleged that due to the unjustifiable delay of Central to settle its claims, it was prevented from receiving rentals for its building, its loan with DBP had increased due to interest and penalties, and it had suffered actual damages. Traverse impleaded DBP as a co-defendant because of its alleged failure or refusal to convince Central to pay Traverse's claims, considering that it transferred Traverse's insurance to Central without Traverse's knowledge.<sup>[14]</sup>

In its Answer, DBP denied that Traverse had no knowledge of the transfer of its insurance to Central as evidenced by its payment of the premium, documentary stamp tax, and other charges for the new insurance policy. DBP also claimed that it was Traverse that transferred its insurance to Central to avoid delays in renewing its insurance, since FGU had no branch office in Tarlac.<sup>[15]</sup>

Central argued in its Answer that Traverse had no valid and sufficient cause of action because aside from violating material conditions in its policy, DBP, as the endorsee of the policy, was the real party-in-interest. Central also averred that Traverse had no one else to blame but itself for the ballooning interest of its loan and lack of rentals since it insisted on an exaggerated, unjustified, and unreasonable claim, considering that the building was not a total loss, as the building was only partially damaged.<sup>[16]</sup>

On November 24, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

**WHEREFORE,** in the light of all the foregoing, judgment is hereby rendered as follows:

(a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (P1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);

(b) ordering defendant DBP to extinguish plaintiff's loan totally, including interest, penalties and charges;

(c) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of P50,000.00;

(d) ordering both defendants to pay jointly and severally the plaintiff, attorney's fees in the amount of P50,000.00, plus cost of litigation.<sup>[17]</sup>

The RTC held that "total loss" did not require that the building be annihilated and turned into rubble, as long as the property was destroyed to such an extent as to deprive it of the character in which it was insured. In holding Central liable for damages, interests, penalties, attorney's fees, and costs of suit, the RTC noted how Central had tried to evade Traverse's claims. It said that Traverse made no declarations as to the use of its building as it had been established that not only was its insurance policy transferred to Central without its knowledge, but that Policy No. TAR 1056 was copied verbatim from its FGU policy.<sup>[18]</sup>

The RTC adjudged DBP to be solidarily liable with Central for damages, attorney's fees, and costs of suit in view of its refusal or failure to pursue the claim against Central. The RTC said that as beneficiary-assignee of Policy No. TAR 1056, DBP should not have stopped at following-up its claim through letters and telegrams but should have either filed its own case against Central or joined Traverse as a co-plaintiff. The RTC took DBP's inaction as suggestive of its deliberate participation in the transfer of Traverse's existing insurance coverage from FGU to Central.<sup>[19]</sup>

On January 13, 1999, DBP filed a Motion for Reconsideration<sup>[20]</sup> based on the following grounds:

1. THE HONORABLE COURT ERRED IN ORDERING DEFENDANT DBP TO EXTINGUISH [TRAVERSE'S] LOAN TOTALLY INCLUDING INTEREST, PENALTIES AND CHARGES.
2. THE HONORABLE COURT ALSO ERRED IN ORDERING DEFENDANT DBP TO PAY [TRAVERSE] JOINTLY AND SEVERALLY THE ATTORNEY'S FEE AND COST OF LITIGATION.<sup>[21]</sup>

On February 1, 1999, the RTC partially granted DBP's motion by completely deleting paragraph (b) and modifying paragraph (c) of the disposition of its November 24, 1998 Decision. The dispositive portion of the RTC's decision in Civil Case No. Q-37497, as revised, reads:

(a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (P1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);

(b) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of P50,000.00;

(c) ordering both defendants to pay plaintiff jointly and severally attorney's fees in the amount of P50,000.00, plus cost of litigation.<sup>[22]</sup>

Both Central and DBP appealed the decision of the RTC to the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 65311.

On September 30, 2004, the Court of Appeals dismissed the appeal and affirmed the RTC.

On October 18, 2004, Central moved for the reconsideration of the Court of Appeals' Decision, alleging that it dealt in good faith with Traverse.<sup>[23]</sup>

On October 20, 2004, DBP filed its own Motion for Partial Reconsideration, seeking the rectification of the misquoted dispositive portion, which was from the November 24, 1998 Decision of the RTC, and the setting aside of the order making DBP solidarily liable with Central for the payment of attorney's fees and costs of suit.<sup>[24]</sup>

On August 11, 2005, the Court of Appeals resolved both motions for reconsideration, denying Central's as its arguments were but a rehash of its petition, and partially granting DBP's, in view of the RTC's February 1, 1999 Order.<sup>[25]</sup>

Undaunted, DBP, on September 27, 2005, filed a petition for review of its case before this Court. Pending the resolution of its petition, DBP then moved for this Court to Direct the Lower Court to Issue Writ of Partial Execution.

In seeking our review of its case, DBP assigns only one error, to wit:

THE COURT OF APPEALS ERRED IN HOLDING PETITIONER DBP SOLIDARILY LIABLE WITH RESPONDENT CENTRAL FOR ATTORNEY'S FEES IN THE AMOUNT OF P50,000.00 PLUS COST OF LITIGATION. <sup>[26]</sup>

DBP claims that it cannot be held solidarily liable with Central for the payment of attorney's fees without contravening Article 2208 of the Civil Code, which sanctions an award only when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. DBP argues that there is no legal justification to hold it liable for attorney's fees and cost of litigation as nowhere in the decision was it stated that Traverse was compelled to litigate because of DBP's act or omission. DBP alleges that Central's refusal to pay Traverse's claim could not be attributed to it especially since it exerted all efforts to collect from Central. It avers that filing a cross-claim would have been a mere surplusage and failure to file such cannot be considered as a basis for its liability. DBP further asseverates that the speculation that Traverse would have been able to easily collect from FGU had its insurance not been transferred to Central is not a basis for awarding attorney's fees since it was Traverse itself that chose to transfer its insurance to Central.<sup>[27]</sup>

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