590 Phil. 342

THIRD DIVISION

[G.R. No. 146141, October 17, 2008]

ERNESTO CANADA, DOING BUSINESS UNDER THE NAME AND STYLE OF HI-BALL FREIGHT SERVICES, PETITIONER, VS. ALL COMMODITIES MARKETING CORPORATION, RESPONDENT.

D E C I S I O N

NACHURA, J.:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Ernesto P. Canada, challenging the November 15, 1999 Decision[1] and the October 11, 2000 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 43476.

The facts:

Petitioner Ernesto P. Canada (petitioner) is engaged in business of providing trucking and hauling services under the name Hi-Ball Freight Services. Respondent All Commodities Marketing Corporation (respondent) has been a valued client of petitioner for several years.

On October 27, 1986, respondent contracted petitioner's services to haul and deliver one thousand (1,000) sacks of sugar from Pier 18, North Harbor in Tondo, Manila to the Pepsi Cola Plant at Muntinlupa, Metro Manila (now Muntinlupa City). The transaction was covered by Way Bills/ Delivery Receipt Nos. 5340[3] and 5341[4] of All Star Transport, Inc. (All Star), but duly signed by petitioner's driver. As agreed, petitioner loaded respondent's 1,000 sacks of sugar into his two (2) trucks; however, the same were never delivered to the Pepsi Cola Plant. The drivers of the trucks, along with the helpers, had since vanished into thin air.

Respondent demanded payment of the value of the sugar, but the demand was not heeded. Consequently, respondent filed a complaint[5] against petitioner with the Regional Trial Court (RTC) of Makati to recover the value of the lost sugar. The case was docketed as Civil Case No. 18826.

In his answer,[6] petitioner admitted that respondent contracted him to haul and deliver 1,000 sacks of sugar, but denied that the cargo did not reach their destination. He averred that the cargo were delivered to the Pepsi Cola Plant in Muntinlupa City on October 27, 1986. He rejected responsibility for the claim arguing that the loss of the goods was either due to respondent's negligence or due to fortuitous event.[7] By way of counterclaim, petitioner asserted his right to payment of P350,000.00, representing the value of the truck that was allegedly seized by respondent.

In due course, the RTC rendered judgment[8] against petitioner, decreeing that:

> IN VIEW THEREOF, this case is hereby resolved in favor of the [respondent] and [petitioner] is hereby ordered to:
>
> a. pay the [respondent] the sum of P350,000.00 representing the value of the sugar lost, plus the interest that have accrued thereon from the filing of this complaint until its actual payment;
>
> b. pay the [respondent] the other actual losses it suffered by reason of the non-delivery of the sugar in terms of unearned income, cost of money and opportunity lost in the amount of P50,000.00;
>
> c. pay the [respondent] the amount of P50,000.00 as and for exemplary damages;
>
> d. pay the cost of suit, litigation expenses and attorney's fees in the sum equivalent to 20% of the claim hereunder, plus the per appearance fee of P300.00.
>
> SO ORDERED.[9]

Aggrieved, petitioner appealed to the CA. He raised an argument that was totally new and was never raised before the RTC, to wit -Hi Ball Freight Services was not the common carrier of respondent; hence, cannot be held liable for the value of the lost sugar.

On November 15, 1999, the CA rendered the assailed Decision. Affirming the RTC and rejecting petitioner's new theory, the CA noted that petitioner had argued his case before the court *a quo* without denying his contract with respondent; that it was only after the adverse judgment was rendered that petitioner began to deny his contract with respondent. It thus ruled that petitioner is estopped from presenting this issue for the first time on appeal. The CA also rejected petitioner's defense of fortuitous event for lack of basis, and sustained the finding of liability against him.

Petitioner filed a motion for reconsideration, but the CA struck it down on October 11, 2000.

Petitioner is now before us assailing the finding of liability against him. In gist, he denied his contract of carriage with respondent and passes responsibility to All Star Transport Inc. (All Star), whose name appeared in the Waybill/Delivery Receipt. Petitioner also assails the dismissal of his counterclaim.

The petition is devoid of merit.

Records show that the theory of petitioner before the trial court was different from the one he espoused in the appellate court. At the trial court stage, petitioner insisted that the goods were delivered to the Pepsi Cola Plant. He further argued that the loss was either due to the fault of respondent or due to fortuitous event. After the RTC rendered an adverse decision, petitioner adopted a new theory, denying his contract with respondent and passing all the responsibility to All Star.

As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present evidence *in contra* to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[10] To permit petitioner at this stage to change his theory would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[11]

In this light, we agree with the following disquisition of the CA rejecting petitioner's maneuver:

> None whatsoever can be unraveled from the records which would show that [petitioner] was in no way a party to the contract. There is nothing on record as well that would tend to show that a certain All Star merely hired [petitioner]. As a matter of fact, during the trial the [respondent's] witness specifically testified that [petitioner's] services have been engaged by All Commodities Marketing Corporation for five years. Again, this was never disputed nor rebutted by the [petitioner].
>
> [Petitioner] as a matter of fact had fought its case before the lower court without denying its relationship or contract with the [respondent] until [the] judgment was rendered against him. He raised the defense that the truck was hijacked. That it is only now that he belie the claim of the [respondent] of the contract between them. Simply put, this was an issue never brought out before the court a quo, hence, [petitioner] is now estopped to present as such before this Court.[12]

Just as meaningful, petitioner had admitted his contract of carriage with respondent in the court *a quo*.

To recall, petitioner in his answer admitted paragraphs 5 and 6 of the complaint[13] which referred to the contract between him and respondent.[14] During the trial, petitioner also admitted that the truck drivers and helpers who loaded the goods were his employees.[15] He even tried to settle the case amicably, but negotiations for settlement had failed. These were unmistakable admissions of petitioner's contractual relation with respondent.

We have always adhered to the familiar doctrine that an admission made in the course of the trial, either by verbal or written manifestations, or stipulations, cannot be controverted by the party making such admission; they become conclusive on him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not.[16] This doctrine is embodied in Section 4, Rule 129 of the Rules of Court:

> SEC. 4. *Judicial admissions.* â”€ An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it