CEBU CITY

# SPECIAL TWENTIETH DIVISION

# [ CA-G.R. CV No. 04328, July 17, 2014 ]

## SPS. MEDARDO & JOCELYN DELFINO, PLAINTIFFS-APPELLEES, VS. SPS. ALEJANDRO & LIZA NACORDA, DEFENDANTS-APPELLANTS.

## D E C I S I O N

**QUIJANO-PADILLA, J.:**

Before Us is an appeal seeking to reverse and set aside the September 23, 2011 Decision[1] of the Regional Trial Court, Branch 7, Cebu City filed by defendants-appellants spouses Alejandro and Liza Nacorda ("spouses Nacorda").

The controversy arose from the foregoing facts as aptly summarized by the trial court, viz:

> "On January 24, 2007, a conflagration gutted the house of Alejandro and Liza Nacorda, as well as that of Medardo and Jocelyn Delfino ("spouses Delfino"), together with six other homes, located at Lower Yati, Sabellano St., Quiot, Pardo, Cebu City.
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> The Delfinos claim that the fire, which started in the room of the son of the Nacordas, was caused by an unplugged electric flat iron, and put their damage in the amount of P300,000.00, the original cost of constructing their house, and aside from this, they ask for moral damages and attorney's fees.
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> The Nacordas, on the other hand, maintain that the fire was purely an accident and deny that there was a flat iron in their house since the utility was being repaired by a neighbor. By way of counterclaim, the Nacordas ask for attorney's fees, litigation expenses and moral and exemplary damages."[2]

During trial, the plaintiffs-appellees spouses Delfino presented as evidence the testimony of Jocelyn Delfino who claimed that the fire started in the house of spouses Nacorda and that it was caused by an electric flat iron left unplugged. She testified that she learned this from spouses Nacorda's helper, Jason, and from newspaper articles stating that spouses Nacorda admitted that the fire came from the unplugged electric flat iron.[3]

Plaintiffs-appellees then submitted as documentary evidence the newspaper articles recounting the fire incident. The writers of these newspaper articles also testified on the circumstances when they documented the fire incident.[4]

They also presented the fire investigator, Frank Donoso, as rebuttal witness, who

testified that his report regarding the source of the fire was gathered from interviews with the residents of the area. He admitted that he could not present any forensic evidence to support his report and that his on-site ivestigation did not include any physical investigation of the debris from the fire.[5]

The defendants-appellants spouses Nacorda, on their part, presented the testimonies of Liza Nacorda[6] and Jason Diopelo[7].

Liza Nacorda's testimony, corroborated by their helper, Jason Diopelo, centered on the denial that the fire started from their unplugged electric iron. She further narrated that when she came out from the bathroom, the room of her son Pluto was already on fire. She claimed that their electric flat iron, when the fire broke out, was not at their house because it was being repaired. She also denied that she was interviewed by newspaper reporters during the incident.

On September 23, 2011, the trial court held the defendants-appellants spouses Nacorda liable for damages in favor of spouses Delfino. The trial court, while ruling that the evidence of the plaintiffs-appellees spouses Delfino to be merely based on hearsay, found that the proximate cause of the fire that broke out was spouses Nacorda's negligence by applying the doctrine of *res ipsa loquitur*. It then awarded spouses Delfino an amount of One Hundred Thousand Pesos (P100,000.00) as temperate damages for their failure to prove with certainty the actual damages they were claiming. In addition, spouses Delfino were also awarded attorney's fees.

The dispositive portion of the September 23, 2011 Decision of the trial court reads, viz:

> "Hence, Spouses Alejandro Nacorda and Liza Nacorda are directed to pay Spouses Medardo Delfino and Jocelyn Delfino the amount of P100,000.00, P50,000.00 as attorney's fees, and the costs.
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> SO ORDERED."[8]

Aggrieved by the trial court's ruling, defendants-appellants filed this appeal and assigned to the trial court the following errors:

> "I. THE LOWER COURT ERRED IN FINDING THAT THE FIRE WAS CAUSED BY THE NEGLIGENCE OF APPELLANTS AND THEIR EMPLOYEES.
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> II. THE LOWER COURT ERRED IN AWARDING TEMPERATE DAMAGES AND ATTORNEY'S FEES IN FAVOR OF APPELLEES."[9]

In their Appeal Brief,[10] defendants-appellants spouses Nacorda argue that no single iota of evidence was ever presented by the plaintiffs-appellees that would show that the fire was caused by the negligence of the defendants-appellants or their employees.[11] Further, they assert that the fire which broke out in their house was totally unexpected and unforeseen, and that the same occurred independent of their will, thus the fire must be considered a fortuitous event for which they should not be held liable.[12] Futhermore, they contend that the trial court erred in applying the doctrine of *res ipsa loquitur*.[13] They then continue to argue that temperate damages should not have been awarded to spouses Delfino considering that

defendants-appellants cannot be held liable for a fortuitous event, and considering further that the failure to prove the actual damages was due to plaintiffs-appellees' own negligent and illegal acts.[14] Finally, they argue that the award of attorney's fees had no basis, hence it must be deleted.[15]

Plaintiffs-appellees spouses Delfino, meanwhile, in their own Appeal Brief,[16] maintain that the trial court correctly found that the proximate cause of the fire was the negligence of spouses Nacorda. They defend the application of the doctrine of *res ipsa loquitur* in the finding of negligence on the part of spouses Nacorda. Also, they argue that the trial court properly awarded them temperate damages and attorney's fees.

Considering the arguments of the parties, We have established that the following issues to be resolved: whether the proximate cause of the fire was the negligence of the defendants-appellants spouses Nacorda, and corollary thereto, whether the doctrine of *res ipsa loquitur* could be applied in this case; and whether the awards of temperate damages and attorney's fees were proper.

We resolve in favor of plaintiffs-appellees.

Preliminarily, We affirm the finding of the trial court in holding that the evidence of the plaintiffs-appellees as hearsay. The testimony of witness Jocelyn Delfino clearly was not based on her personal knowledge. Likewise, the newspaper articles to which plaintiffs-appellees' rely to prove the cause of fire are also hearsay evidence.

As already laid down by case law, "newspaper articles amount to "hearsay evidence, twice removed" and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted. In this case, the news article is admissible only as evidence that such publication does exist with the tenor of the news therein stated."[17] Hence, the presentation of the writers who identified the newspaper articles would not lend support to the claim that the fire started from an unplugged electric flat iron because the substance of their testimonies only proves that the publication did exist and the tenor of the news stated therein.

Nevertheless, We maintain that the negligence of defendant-appellants spouses Nacorda or their employees was the proximate cause of the fire.

Indeed, it is a rule in this jurisdiction that in case of non-contractual negligence or *culpa aquiliana*, the burden of proof is on the plaintiff to establish that the proximate cause of the injury was the negligence of the defendant. However, the doctrine of *res ipsa loquitur* is also an accepted principle, as a rule of evidence peculiar to the law of negligence, which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.[18] The application of the doctrine, thus, results in the shift of the burden of evidence on the defendant to prove that he had observe due care and diligence.

The Supreme Court, in the case of *D.M. Consunji v. Court of Appeals*[19] extensively elucidated the concept of *res ipsa loquitur*, where the same was emphasized to be applicable when necessary evidence is absent or not available to the effect that where the thing which causes the injury, without fault of the injured person, is under

the exclusive control of the defendant and the injury is such as in the ordinary cause of things does not occur if he having such control used proper care, it affords reasonable evidence, in the absence of explanation, that the injury arose from defendant's want of care, to wit:

> "While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of res ipsa loquitur, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, **the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence**.
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> x x x *where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.*
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> **One of the theoretical bases for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.**
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> The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. **The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.**
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> It has been said that the doctrine of res ipsa loquitur furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. **The res ipsa loquitur doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power.** Accordingly, some courts add to the three prerequisites for the application of the res ipsa loquitur doctrine the further requirement that for the res ipsa loquitur doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or