



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

SUBIC BAY LEGEND RESORTS  
AND CASINOS, INC.,

*Petitioner,*

- versus -

BERNARD C. FERNANDEZ,  
*Respondent.*

G.R. No. 193426

Present:

CARPIO, *Acting Chief Justice*,<sup>\*</sup>  
BRION,  
DEL CASTILLO,  
MENDOZA, *and*  
LEONEN, *JJ.*

Promulgated:  
SEP 29 2014

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*<sup>1</sup> assails the April 27, 2010 Decision<sup>2</sup> and August 24, 2010 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 91758, entitled “*Bernard C. Fernandez, Plaintiff-Appellee, versus Subic Bay Legend Resorts and Casinos, Inc., Defendant-Appellant*,” which affirmed *in toto* the May 17, 2006 Decision<sup>4</sup> of the Regional Trial Court (RTC) of Olongapo City, Branch 74, in Civil Case No. 237-0-97.

***Factual Antecedents***

Petitioner Subic Bay Legend Resorts And Casinos, Inc., a duly organized and existing corporation operating under Philippine laws, operates the Legenda Hotel and Casino (Legenda) located in the Subic Bay Freeport Zone in Zambales. On the other hand, respondent Bernard C. Fernandez is the plaintiff in Civil Case

<sup>\*</sup> Per Special Order No. 1803 dated September 24, 2014.

<sup>1</sup> *Rollo*, pp. 17-45.

<sup>2</sup> *Id.* at 46-55; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Mario L. Guariña III and Rodil V. Zalameda.

<sup>3</sup> *Id.* at 56.

<sup>4</sup> *Id.* at 138-140; penned by Judge Ramon S. Caguioa.

No. 237-0-97 prosecuted against petitioner in Olongapo RTC.

As determined by the CA, the facts of the case are as follows:

At around eleven o'clock in the evening of 6 June 1997, the appellee's<sup>5</sup> brother[,] Ludwin Fernandez[,] visited the Legenda Hotel and Casino x x x owned and operated by the appellant<sup>6</sup> and located along the Waterfront Road, Subic Bay Freeport Zone. Legenda had strategically installed several closed-circuit television (CCTV) cameras as part of security measures required by its business. The monitors revealed that Ludwin changed x x x \$5,000.00 worth of chips into smaller denominations. Legenda admitted in its brief that its surveillance staff paid close attention to Ludwin simply because it was "unusual" for a Filipino to play using dollar-denominated chips. After Ludwin won \$200.00 in a game of baccarat, he redeemed the value of chips worth \$7,200.00. A review of the CCTV recordings showed that the incident was not the first time Ludwin visited the Casino, as he had also been there on 5 June 1997.

An operation was launched by Legenda to zero-in on Ludwin whose picture was furnished its security section. Thus, unbeknownst to him, he was already closely watched on 13 June 1997 when he went with another brother, Deoven[,] to the casino at around the same time or at 11:17 p.m. After playing (and losing \$100.00) only one round of baccarat, the siblings had their chips encashed at two separate windows. Since the cashiers were apprised of a supposed irregularity, they "froze" the transaction.

Shortly thereafter, Legenda's internal security officers accosted Ludwin and Deoven and ordered them to return the cash and they complied without ado because they were being pulled away. The two were eventually escorted to private rooms where they were separately interrogated about the source of the chips they brought. They were held for about seven hours until the wee hours of the morning, without food or sleep. The ultimatum was simple: they confess that the chips were given by a certain employee, Michael Cabrera, or they would not be released from questioning. The same line of questioning confronted them when they were later turned-over for blotter preparation to the Intelligence and Investigation Office of the Subic Bay Metropolitan Authority (IIO SBMA). Finally, the brothers succumbed to Legenda's instruction to execute a joint statement implicating Cabrera as the illegal source of the chips. Due to hunger pangs and fatigue, they did not disown the statement even when they subscribed the same before the prosecutor in whose office they were [later] brought. On the other hand, they signed for basically the same reason a document purporting to show that they were "released to [their] brother's custody in good condition." At the time, Deoven was about 21 years old, in his second year of engineering studies and was not familiar with the so-called "*estafa*" with which the security personnel threatened to sue him for; although he was quite aware of the consequences of a crime such as direct assault because he had previously been convicted thereof. About two weeks later, Deoven executed a retraction in Baguio City where he took up his engineering course.<sup>7</sup>

<sup>5</sup> Respondent herein.

<sup>6</sup> Petitioner herein.

<sup>7</sup> *Rollo*, pp. 46-48.

On July 1, 1997, respondent filed Civil Case No. 237-0-97 for recovery of sum of money with damages against petitioner, on the premise that on June 13, 1997, he went to Legenda with his brothers Ludwin and Deoven; that he handed over Legenda casino chips worth US\$6,000.00, which belonged to him, to his brothers for the latter to use at the casino; that petitioner accosted his brothers and unduly and illegally confiscated his casino chips equivalent to US\$5,900.00; and that petitioner refused and continues to refuse to return the same to him despite demand. His Complaint<sup>8</sup> prayed for the return of the casino chips and an award of ₱50,000.00 moral damages, ₱50,000.00 exemplary damages, ₱30,000.00 attorney's fees, ₱20,000.00 litigation expenses, and costs.

Petitioner's Answer with Compulsory Counterclaim<sup>9</sup> essentially alleged that right after Ludwin and Deoven's transactions with the Legenda cashier were frozen on June 13, 1997, they voluntarily agreed to proceed to the Legenda security office upon invitation, where Ludwin voluntarily informed security officers that it was a certain Michael Cabrera (Cabrera) – a Legenda table inspector at the time – who gave him the casino chips for encashment, taught him how to play baccarat and thereafter encash the chips, and rewarded him with ₱1,000.00 for every \$1,000.00 he encashed; that Ludwin pointed to a picture of Cabrera in a photo album of casino employees shown to him; that Ludwin and Deoven were then brought to the IIO SBMA, where they reiterated their statements made at the Legenda security office; that they volunteered to testify against Cabrera; that respondent himself admitted that it was Cabrera who gave him the casino chips; that Ludwin and Deoven voluntarily executed a joint affidavit before the Olongapo City Prosecutor's Office, which they subsequently recanted; that respondent had no cause of action since the confiscated casino chips worth US\$5,900.00 were stolen from it, and thus it has the right to retain them. By way of counterclaim, petitioner sought an award of ₱1 million moral damages, ₱1 million exemplary damages, and ₱.5 million attorney's fees and litigation expenses.

Respondent filed his Answer<sup>10</sup> to petitioner's counterclaim.

### ***Ruling of the Regional Trial Court***

After pre-trial and trial, the trial court rendered its May 17, 2006 Decision, which decreed as follows:

WHEREFORE, finding that the evidence preponderates in favor of the plaintiff, judgment is rendered against the defendant ordering it to:

- 1) Return to plaintiff casino chips worth USD \$5,900.00 or its equivalent

<sup>8</sup> Id. at 57-60.

<sup>9</sup> Id. at 61-75.

<sup>10</sup> Id. at 83.



in Philippine Peso at the rate of ₱38.00 to USD \$1 in 1997.

2) Pay plaintiff attorney's fees in the amount of ₱30,000.00

3) [Pay] [c]ost of this suit.

SO DECIDED.<sup>11</sup>

In arriving at the above conclusion, the trial court held:

The primordial issue is whether or not plaintiff can be considered the lawful owner of the USD \$5,900 worth of casino chips that were confiscated.

There is no dispute that the subject chips were in the possession of the plaintiff. He claims he got hold of them as payment for car services he rendered to a Chinese individual. Defendant however, contends that said chips were stolen from the casino and it is the lawful owner of the same.

The *onus* fell on defendant to prove that the casino chips were stolen. The proof adduced however, is wanting. The statements of Deoven and Ludwin C. Fernandez, confessing to the source of the chips were recanted hence, have little probative value. The testimony of defendant's witnesses narrated defendant's action responding to the suspicious movements of the Fernandez brothers based on surveillance tapes. The tapes, however, do not show how these persons got hold of the chips. The alleged source in the person of Mike Cabrera, a table inspector of the casino[,] was based on the recanted declarations of the brothers. No criminal charge was shown to have been filed against him nor the plaintiff and his brothers. Neither was there an explanation given as to how those chips came into the possession of Mike Cabrera much less that he passed them on to the brothers for the purpose of encashing and dividing the proceeds amongst themselves. All told therefore, there is no direct evidence to prove the theory of the defendant and the circumstantial evidence present is, to the mind of the court, not sufficient to rebut the legal presumption that a person in possession of personal property is the lawful owner of the same (*Art. 559, Civil Code of the Philippines*).<sup>12</sup>

### ***Ruling of the Court of Appeals***

Petitioner appealed the May 17, 2006 Decision of the trial court, arguing that Ludwin and Deoven's admission in their joint affidavit before the Olongapo City Prosecutor's Office that it was Cabrera who gave them the casino chips strongly indicates that the chips were stolen from Legenda; that the subsequent recantation by Ludwin and Deoven of their joint affidavit should be looked upon with disfavor, given that recanted testimony is unreliable and recantations can be easily secured from poor and ignorant witnesses and for monetary consideration or through intimidation; that respondent's explanation that he gave the chips to his brothers Ludwin and Deoven for them to play in the casino is highly doubtful; that

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<sup>11</sup> Id. at 140.

<sup>12</sup> Id.

the true purpose of Ludwin and Deoven was to encash the stolen chips; that no force or intimidation attended the treatment accorded Ludwin and Deoven when they were accosted and asked to explain their possession of the chips; and that the trial court erred in awarding attorney's fees and costs for the filing of a baseless suit solely aimed at unjustly enriching respondent at petitioner's expense.

On April 27, 2010, the CA issued the assailed Decision which affirmed the trial court's May 17, 2006 Decision. Petitioner's Motion for Reconsideration was rebuffed as well.

In deciding against petitioner, the CA held that, applying Article 559 of the Civil Code,<sup>13</sup> respondent had the legal presumption of title to or ownership of the casino chips. This conclusion springs from respondent's admission during trial that the chips represented payment by a Chinese customer for services he rendered to the latter in his car shop. The CA added that since respondent became the owner of the chips, he could very well have given them to Ludwin and Deoven, who likewise held them as "possessors in good faith and for value" and with "presumptive title" derived from the respondent. On the other hand, petitioner failed to convincingly show that the chips were stolen; for one, it did not even file a criminal case against the supposed mastermind, Cabrera – nor did it charge Ludwin or Deoven – for the alleged theft or taking of its chips.

The CA likewise held that Ludwin's and Deoven's statements and admissions at the Legenda security office are inadmissible because they were obtained in violation of their constitutional rights: they were held in duress, denied the right to counsel and the opportunity to contact respondent, and deprived of sleep, which is one of the "more subtler [sic] techniques of physical and psychological torture to coerce a confession."<sup>14</sup> It found that the actions and methods of the Legenda security personnel in detaining and extracting confessions from Ludwin and Deoven were illegal and in gross violation of Ludwin's and Deoven's constitutional rights.<sup>15</sup>

Finally, the CA held that petitioner was guilty of bad faith in advancing its theory and claim against respondent by unduly accusing him of dealing in stolen casino chips, which thus entitles respondent to the reduced award of attorney's fees in the amount of ₱30,000.00. *Mdm*

<sup>13</sup> Article 559. The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

<sup>14</sup> *Rollo*, p. 54.

<sup>15</sup> Citing *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82 (1997).

### Issues

Petitioner raises the following issues:

- a) The Honorable Court seriously erred in ruling that the recanted statements of Deoven Fernandez and Ludwin C. Fernandez have [no] probative value;
- b) The Honorable Court seriously erred in ruling that the circumstantial evidence present is not sufficient to rebut the legal presumption that a person in possession of personal property is the lawful owner of the same;
- c) The Honorable Court seriously erred in finding that the evidence preponderates in favor of the herein respondent; [and]
- d) The Honorable Court seriously erred in awarding attorney's fees and costs of suit in favor of the respondent.<sup>16</sup>

### *Petitioner's Arguments*

In its Petition and Reply,<sup>17</sup> petitioner mainly argues that the assailed dispositions are grounded entirely on speculation, and the inferences made are manifestly mistaken and based on a misappreciation of the facts and law; that the CA failed to consider the testimonial and documentary evidence it presented to prove the fact that the casino chips were missing and were stolen by Cabrera, who thereafter gave them to respondent's brothers, Ludwin and Deoven. Petitioner maintains that the presumption of title under Article 559 cannot extend to respondent's brothers, who admitted during the investigation at the Legenda security office and in their Joint Affidavit<sup>18</sup> that the chips came from Cabrera, and not respondent; that the subsequent Sworn Statement<sup>19</sup> recanting the Joint Affidavit should not be given credence, as affidavits of recantation can easily be secured – which thus makes them unreliable; and that no duress attended the taking of the brothers' Joint Affidavit, which was prepared by Henry Marzo of the Intelligence and Investigation Office (IIO) of the Subic Bay Metropolitan Authority (SBMA).

Petitioner asserts that it is unbelievable that respondent would give US\$6,000.00 worth of casino chips to his brothers with which to play at the casino; that with the attending circumstances, the true intention of respondent's brothers was to encash the stolen chips which Cabrera handed to them, and not to play at the casino. Petitioner thus concludes that no coercion could have attended the investigation of Ludwin and Deoven; that their subsequent recantation should not be given weight; and that for suing on a baseless claim, respondent is not

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<sup>16</sup> *Rollo*, pp. 31-32.

<sup>17</sup> *Id.* at 215-224.

<sup>18</sup> *Id.* at 79-80.

<sup>19</sup> *Id.* at 81.



entitled to attorney's fees and costs of litigation.

Petitioner thus prays for the reversal of the assailed dispositions and the corresponding dismissal of Civil Case No. 237-0-97.

### ***Respondent's Arguments***

In his Comment,<sup>20</sup> respondent generally echoes the pronouncement of the CA. He likewise notes that petitioner has raised only questions of fact; that the Petition is being prosecuted to delay the proceedings; that the trial and appellate courts are correct in finding that petitioner failed to prove its case and show that the casino chips were stolen; that petitioner failed to rebut the presumption that a person in possession of personal property is the lawful owner of the same, pursuant to Article 559 of the Civil Code; and that the ₱30,000.00 award of attorney's fees should be increased to ₱100,000.00.

### **Our Ruling**

The Petition is denied.

Petitioner's underlying theory is that the subject casino chips were in fact stolen by its employee Cabrera, then handed over to respondent's brothers, Ludwin and Deoven, for encashment at the casino; that Ludwin and Deoven played at the casino only for show and to conceal their true intention, which is to encash the chips; that respondent's claim that he owned the chips, as they were given to him in payment of services he rendered to a Chinese client, is false. These arguments require the Court to examine in greater detail the facts involved. However, this may not be done because the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented during trial; the resolution of factual issues is the function of lower courts, whose findings thereon are received with respect and are binding on the Court subject only to specific exceptions.<sup>21</sup> In turn, the factual findings of the Court of Appeals carry even more weight when they are identical to those of the trial court's.<sup>22</sup>

Besides, a question of fact cannot properly be raised in a petition for review on *certiorari*.<sup>23</sup>

Moreover, if petitioner should stick to its theory that Cabrera stole the

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<sup>20</sup> Id. at 210-213.

<sup>21</sup> *FNCB Finance v. Estavillo*, G.R. No. 93394, December 20, 1990, 192 SCRA 514, 517.

<sup>22</sup> *Borromeo v. Sun*, 375 Phil. 595, 602 (1999).

<sup>23</sup> *Mindanao Terminal and Brokerage Service, Inc. v. Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor*, G.R. No. 174300, December 5, 2012, 687 SCRA 28, 41.

subject casino chips, then its failure to file a criminal case against the latter – including Ludwin and Deoven for that matter – up to this point certainly does not help to convince the Court of its position, especially considering that the supposed stolen chips represent a fairly large amount of money. Indeed, for purposes of this proceeding, there appears to be no evidence on record – other than mere allegations and suppositions – that Cabrera stole the casino chips in question; such conclusion came unilaterally from petitioner, and for it to use the same as foundation to the claim that Ludwin, Deoven and respondent are dealing in stolen chips is clearly irregular and unfair.

Thus, there should be no basis to suppose that the casino chips found in Ludwin's and Deoven's possession were stolen; petitioner acted arbitrarily in confiscating the same without basis. Their Joint Affidavit – which was later recanted – does not even bear such fact; it merely states that the chips came from Cabrera. If it cannot be proved, in the first place, that Cabrera stole these chips, then there is no more reason to suppose that Ludwin and Deoven were dealing in or possessed stolen goods; unless the independent fact that Cabrera stole the chips can be proved, it cannot be said that they must be confiscated when found to be in Ludwin's and Deoven's possession.

It is not even necessary to resolve whether Ludwin's and Deoven's Joint Affidavit was obtained by duress or otherwise; the document is irrelevant to petitioner's cause, as it does not suggest at all that Cabrera stole the subject casino chips. At most, it only shows that Cabrera gave Ludwin and Deoven casino chips, if this fact is true at all – since such statement has since been recanted.

The fact that Ludwin and Deoven appear to be indecisive as to who gave them the casino chips does not help petitioner at all. It cannot lead to the conclusion that Cabrera stole the chips and then gave them to the two; as earlier stated, petitioner had to prove this fact apart from Ludwin's and Deoven's claims, no matter how incredible they may seem.

Though casino chips do not constitute legal tender,<sup>24</sup> there is no law which prohibits their use or trade outside of the casino which issues them. In any case, it is not unusual – nor is it unlikely – that respondent could be paid by his Chinese client at the former's car shop with the casino chips in question; said transaction, if not common, is nonetheless not unlawful. These chips are paid for anyway;

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<sup>24</sup> Under Section 48 of Republic Act No. 7653, or the New Central Bank Act, "the unit of monetary value in the Philippines is the peso." And under Section 50 of the same law, "the Bangko Sentral shall have the sole power and authority to issue currency within the territory of the Philippines. No other person or entity, public or private, may put into circulation notes, coins or any other object or document which, in the opinion of the Monetary Board, might circulate as currency, nor reproduce or imitate the facsimiles of Bangko Sentral notes without prior authority from the Bangko Sentral."

Under Section 52, only those "notes and coins issued by the Bangko Sentral shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private."



petitioner would not have parted with the same if their corresponding representative equivalent – in legal tender, goodwill, or otherwise – was not received by it in return or exchange. Given this premise – that casino chips are considered to have been exchanged with their corresponding representative value – it is with more reason that this Court should require petitioner to prove convincingly and persuasively that the chips it confiscated from Ludwin and Deoven were indeed stolen from it; if so, any Tom, Dick or Harry in possession of genuine casino chips is presumed to have paid for their representative value in exchange therefor. If petitioner cannot prove its loss, then Article 559 cannot apply; the presumption that the chips were exchanged for value remains.

Finally, the Court sustains the award of attorney's fees. Under Article 2208 of the Civil Code,<sup>25</sup> attorney's fees may be recovered when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim, or in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. Petitioner's act of arbitrarily confiscating the casino chips and treating Ludwin and Deoven the way it did, and in refusing to satisfy respondent's claim despite the fact that it had no basis to withhold the chips, confirm its bad faith, and should entitle respondent to an award.

With the foregoing view of the case, a discussion of the other issues raised is deemed irrelevant and unnecessary.

**WHEREFORE**, the Petition is **DENIED**. The assailed April 27, 2010 Decision and August 24, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 91758 are **AFFIRMED**.

**SO ORDERED.**



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<sup>25</sup> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*


  
**ARTURO D. BRION**  
*Associate Justice*

  
**JOSE CATRAL MENDOZA**  
*Associate Justice*

  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Acting Chief Justice*