Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PIONEER INSURANCE & SURETY CORPORATION, Petitioner, - versus - **CARMEN G. TAN also known as CARMEN S.F. GATMAYTAN and/or UNKNOWN OWNER/PROPRIETOR OF SAVE MORE DRUG doing business under the name and style of SAVE MORE DRUG,** Respondent.	**G.R. No. 239989** **Present:** PERALTA, *C.J.*, *Chairperson,* CAGUIOA, REYES, J. JR., LAZARO-JAVIER, and LOPEZ, *JJ.* **Promulgated:** JUL 13 2020

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DECISION

REYES, J. JR., *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the Amended Decision[2] dated June 16, 2017 and Resolution[3] dated June 5, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 103363 which dismissed the complaint for damages filed by Pioneer Insurance & Surety Corporation (petitioner).

The Relevant Antecedents

As culled from the records, the facts of the case are as follows:

Petitioner, engaged in the business of fire insurance, extended Fire Insurance Policy No. FI-PP-03-0000356-00-D (subject policy) in favor of

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1 *Rollo*, pp. 10-52.
2 Penned by Associate Justice Rodil V. Zalameda (now a Member of the Court), with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; id. at 53-65.
3 Id. at 104-105.

United Laboratories, Inc. (Unilab) for the latter's stocks of various drugs, medicines, and pharmaceutical products. The policy was in effect for a period of one year from December 29, 2003 to December 29, 2004.[4]

Among the goods covered by the subject policy were delivered to Carmen G. Tan (respondent), proprietor of Save More Drug (Save More). Said goods were stored at respondent's warehouse at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City.[5] Notably, the Terms and Conditions of the Delivery Receipts state:[6]

> x x x Goods remain the property of UNITED LABORATORIES, INC., until fully paid but risk of loss arising from any cause shall be for buyer's own account from the moment the goods are delivered to the buyer or the common carrier.

Stocks were continuously being replenished based on the purchase orders made by respondent.[7]

On August 28, 2004, the entire Save More warehouse, including Unilab's goods, was razed by fire. Unilab then filed a claim with petitioner pursuant to the subject policy. Successfully, Unilab obtained the amount of ₱13,430,528.22 which represented the value of the goods stored by Unilab in the Save More warehouse lost by fire. In exchange, Unilab executed in favor of petitioner a Release Claim and a Loss and Subrogation Receipt.[8]

Consequently, petitioner sought to recover from respondent the amount it paid to Unilab. However, respondent refused, prompting petitioner to file a complaint for damages.[9]

In its Complaint[10], petitioner alleged that pursuant to a contract of sale, Unilab delivered to respondent various pharmaceutical products which were stored to the latter's warehouse. However, said products were lost due to fire. Since the cause of the loss was due to negligence of respondent, the latter should reimburse the petitioner for whatever was paid to Unilab by virtue of the former's right of subrogation.

In her Answer with Counterclaim[11], respondent averred the fire was accidental; hence, petitioner could not recover from her.

In a Decision[12] dated December 27, 2013, the Regional Trial Court of Makati City, Branch 62 (RTC) maintained that by subrogation, petitioner's

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4 Id. at 533.
5 Id. at 534.
6 Id. at 124-190.
7 Id.
8 Id.
9 Id.
10 Id. at 107-114.
11 Id. at 408-414.
12 Penned by Judge Selma Palacio Alaras; id. at 445-455.

payment to the insured, Unilab, operated as an assignment to the former of all remedies that the latter may have against the third party whose negligence caused the loss. Moreover, the RTC held that whether the cause of the loss was due to a fortuitous event was beside the point. What is axiomatic is that the respondent's obligation is the payment of money, which is a generic obligation; and failure to make payment shall not relieve her of liability even by reason of fortuitous event. The *fallo* thereof reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered in favor of the plaintiff PIONEER INSURANCE & SURETY CORPORATION ordering defendants CARMEN G. TAN also known as "CARMEN S.F. GATMAYTAN" and/or UNKNOWN OWNER/PROPERTIES of SAVE MORE DRUG doing business under the name and style of "SAVE MORE DRUG" to pay the plaintiff the following:
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> 1) Thirteen million four hundred thirty thousand five hundred twenty-eight & 22/100 pesos (P13,4340,528.22) representing the amount of actual damages plus interest at the legal rate of 6% per annum from date of demand until finality and another 12% per annum from finality until fully paid;
> 2) five percent (5%) of number 1 as attorney's fees; and
> 3) costs of suit.
>
> **SO ORDERED.**[13]

To this, respondent filed an appeal questioning the propriety of the award of damages in favor of petitioner.[14] In an unprecedented manner, respondent raised that it is not liable for damages to petitioner based on the nature of the contract executed between her and Unilab, that is, a contract of consignment.

In a Decision[15] dated August 31, 2016, the CA denied the appeal and affirmed with modification the ruling of the RTC. Adopting the factual findings of the RTC, the CA found that the contract between respondent and Unilab is one of sale. The CA further maintained that Unilab nevertheless retained insurable interest over such goods until full payment of the purchase price. As such, the insurance contract was not terminated by virtue of the transfer of ownership to respondent. Unilab can recover from petitioner for any loss covered by the subject policy, which is payment for unpaid debts and receivables. The prestation under the subject policy is a generic thing, which is not extinguishable even by fortuitous event. Corollary, petitioner can claim from respondent whatever it has paid to Unilab under the rule that one who pays for another may demand from the debtor what he had paid.

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13 Id. at 455.
14 Id. at 538.
15 Penned by Associate Justice Rodil V. Zalameda (now a Member of the Court), with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring; id. at 530-544

The dispositive portion thereof provides:

> **WHEREFORE,** the appeal is hereby **DENIED.** The Assailed Decision dated 27 December 2013 is rendered by Branch 62, Regional Trial Court of Makati City is hereby **AFFIRMED with MODIFICATION**, that is, the legal rate of interest at twelve percent (12%) per annum shall be imposed from the date of demand until 30 June 2013. Thereafter, the rate of six percent (6%) per *annum* shall apply until complete satisfaction of the money award.
>
> **SO ORDERED.**[16]

In a Motion for Reconsideration filed by respondent, she assailed the findings of the CA as to the nature of the contract between her and Unilab. Respondent argued that the contract is one of consignment, which made her an extension of Unilab as principal. That being said, respondent averred that she could not have been liable to petitioner as she had identical interest with Unilab insofar as the subject policy is concerned.[17]

In an Amended Decision[18] dated June 16, 2017, the CA reversed its earlier ruling. Holding that respondent was not liable to petitioner, the CA reviewed the records and found that the contract was one of consignment. Thus, respondent was considered as an agent of Unilab; and as such, cannot be deemed liable to petitioner for the loss of goods. The *fallo* thereof reads:

> **WHEREFORE**, in view of the foregoing, the instant Motion for Reconsideration filed by defendant-appellant is hereby **GRANTED** and Our Decision dated 31 August 2016 is hereby **RECONSIDERED** and **SET ASIDE.**
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> Accordingly, the Decision dated 27 December 2013 of the Regional Trial Court of Makati City, Branch 62 in Civil Case No. 07-106 is likewise **REVERSED** and **SET ASIDE** and plaintiff-appellee Pioneer Insurance & Surety Corporation's Amended Complaint is **DISMISSED.**
>
> **SO ORDERED**.[19]

Said disposition was fortified in a Resolution[20] dated June 5, 2018 following petitioner's motion for reconsideration.

Hence, this petition.

Summarily, petitioner assails the decision of the CA in allowing respondent to change her theory of defense on appeal and subsequently in granting respondent's appeal based on such.

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16 Id. at 543.
17 Id. at 549-551.
18 Supra note 2.
19 Id. at 63.
20 Supra note 3.

In her Comment,[21] respondent insists on the contract of consignment executed between her and Unilab.

In its Reply,[22] petitioner reiterates its earlier arguments in the petition.

The Issue

Petitioner's 13 assignment of errors can be encapsulated in the following issues: (1) whether or not the CA erred in allowing the respondent to change her theory on appeal; (2) whether or not the contract between respondent and Unilab is one of consignment; and (3) whether or not petitioner can recover from respondent based on the former's right to subrogation.

The Court's Ruling

Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory, as in this case.[23] The conflicting findings as to the nature of the contract between respondent and Unilab warrant the exercise of the Court's discretionary power of review.

Petitioner's argument that the CA erred in passing upon the new issue, *i.e.*, whether or not the contract between respondent and Unilab is one of consignment, is meritorious.

Mainly, respondent admitted in its Answer with Counterclaim the allegations of petitioner that it is indeed a buyer of Unilab's pharmaceutical products, thus evincing that the relationship between her and Unilab is governed by a contract of sale, to wit:

COMPLAINT

x x x x

> 2.1 **Defendant** was and still the owner and/or proprietor of Save More Drug located at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City. Further, Defendant was and still is engaged in wholesale and commission trade and was the **buyer of various drugs, medicines and pharmaceutical products of United Laboratories, Inc.**[24] (Emphasis supplied)

x x x x

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21 *Rollo*, pp. 719-765.
22 Id. at 769-795.
23 *Miro v. Vda. De Erederos*, 721 Phil. 787 (2013).
24 Id. at 107.

AMENDED COMPLAINT

x x x x

2.1 **Defendant** was and still the owner and/or proprietor of Save More Drug located at 1910 Don Jose Street, Don Antonio Heights Subdivision, Commonwealth Avenue, Quezon City. Further, Defendant was and still is engaged in wholesale and commission trade and was the **buyer of various drugs, medicines and pharmaceutical products of United Laboratories, Inc.**[25] (Emphasis supplied)

ANSWER WITH COMPULSORY COUNTERCLAIM

x x x x

1.2 The defendant **admits** the allegations contained in paragraphs 2 and 2.1 of the complaint.[26] (Emphasis supplied)

x x x x

In her Memorandum[27] filed before the RTC, respondent further denied her liability by claiming that petitioner's right to subrogation does not automatically mean that it is liable for loss or damage of the goods of Unilab; for petitioner as subrogee has the burden of proving that the loss or damage was a result of a wrong or breach of contract on the part of the respondent.

In all, there was no allegation that the contract between respondent and Unilab is one of consignment until or prior to the appeal.

Naturally, the trial before the RTC operated upon these premises: that Unilab and respondent entered into a contract of sale; and that respondent's main defense was that petitioner had no cause of action against it because the cause of the loss was by no means attributable to her negligence or fault; hence, a fortuituous event. Consequently, the course of the trial was geared towards such facts; and consequently, the RTC ruled in favor of petitioner.

Dismayed by the ruling of the RTC, respondent changed her theory of defense on appeal and maintained that the contract is not one of sale, but of consignment. For the first time on appeal, respondent averred that the contract of consignment eliminated petitioner's right of action against her because she is considered as an extension of Unilab, being an agent of the latter.

On this note, the Court maintains that respondent's course of action is not sanctioned by law.

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25 Id. at 115-116.
26 Id. at 408.
27 Id. at 433-444.

On the dictates of fair play, due process, and justice, points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal.[28]

The prohibition on shifting the theory of the case on appeal was explained by the Court in this manner:

> The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[29] (Citation omitted)

Not only that such principle finds its legal footing on equity, but also on law. Section 15, Rule 44 of the Rules of Court provides:

> SEC. 15. Questions that may be raised on appeal. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

The effect of giving due course to an issue which were not ventilated before the trial court is to strip off the reviewing court of jurisdiction to decide a question not put forth as an issue; therefore, any judgment rendered thereof is extrajudicial and invalid.[30]

In the cases of *Chinatrust (Phils) Commercial Bank v. Turner,*[31] *Bote v. Spouses Veloso,*[32] *Wallem Philippines Services, Inc. v. Heirs of the Late Peter Padrones,*[33] to cite a few, the the Court did not hesitate to strike down a decision of a reviewing court which failed to apply this doctrine.

However, this rule admits of an exception, that is, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[34]

In this case, respondent adopted a different theory on appeal, that is, that the relationship between her and Unilab was based on an alleged contract of consignment. Evidently, the introduction of such theory would

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28 *Peña v. Spouses Tolentino*, 700 Phil. 78, 88 (2012).
29 *Bote v. Spouses Veloso*, G.R. No. 194270, December 3, 2012.
30 *Bernas v. Court of Appeals*, 296-A Phil. 90, 140 (1993)
31 812 Phil. 1 (2017).
32 Supra note 29.
33 756 Phil. 14 (2015).
34 *Bote v. Spouses Veloso*, supra note 29.

necessitate the presentation of such contract. Based on the records, the efficacy and existence of such contract were neither alleged nor proven. From all the faces of legal prism, the exception does not apply in this case.

Verily, the judgment of the CA which passed upon a new issue which was neither raised nor discussed before the trial court is invalid in the absence of the reviewing court's jurisdiction. As such, the Court deems it reasonable not to belabor anymore on the other issues raised in the petition.

As it stands and as aptly ruled by the RTC, Unilab retained insurable interest over the goods by virtue of the agreement between it and the respondent that the ownership thereof shall remain with Unilab until full payment. Corollary, the liability of respondent stems from the same agreement, stating that the buyer bears the risk of loss arising from any cause upon delivery of the goods to respondent.

As it was uncontroverted during trial that the destroyed goods which were situated at respondent's warehouse were still unpaid, the RTC was correct in directing the respondent to pay the petitioner the amount which the petitioner paid to Unilab as insurance proceeds. By right of subrogation, petitioner as the insurer may collect payment from respondent after the satisfaction of the insurance claim of Unilab.[35]

Likewise, the stipulation as to the award of attorney's fees which was mitigated from 25% to 5% of the amount adjudged is upheld.

WHEREFORE, the instant petition is hereby **GRANTED.** Accordingly, the Amended Decision dated June 16, 2017 and the Resolution dated June 5, 2018 of the Court of Appeals in CA-G.R. CV No. 103363 are **REVERSED and SET ASIDE.** The Decision dated December 27, 2013 of the Regional Trial Court of Makati City, Branch 62 is **REINSTATED.**

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

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35 *See Gaisano Cagayan, Inc. v. Insurance Company of North America,* G.R. No. 147839, June 8, 2006.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
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.

DIOSDADO M. PERALTA
Chief Justice