96 Phil. 321

[G.R. No. L-4722. December 29, 1954]

EMILIO STREBEL, PLAINTIFF-APPELLANT, VS. JOSE FIGUERAS, ACTING SECRETARY OF LABOR, FELIPE E. JOSE, DIRECTOR OF LABOR AND CORNELIO S. RUPERTO, ASSISTANT CITY FISCAL OF MANILA, DEFENDANTS-APPELLEES.

D E C I S I O N

CONCEPCION, J.:

This is an appeal, taken by plaintiff, Emilio Strebel, from an order of the Court of First Instance of Manila granting a motion to dismiss filed by the defendants heroin, Jose Figueras, Felipe E. Jose and Cornelio S. Ruperto, and, consequently, dismissing plaintiffs complaint, without special pronouncement as to costs, upon the ground that the facts alleged In said pleading do not constitute a cause of action.

The complaint purports to set forth three causes of action. The alleged acts upon which plaintiff's first cause of action is predicated may be divided into four (4) groups, namely:

1. That, as lessee of a lot situated at Nos. 735-737 Santa Mesa, Manila, plaintiff Strebel subleased part thereof to the Standard Vacuum Oil Company; that the latter constructed thereon a Mobilgas Station which was operated by Eustaqulo & Co., a partnership organized by said plaintiff and one Prime Eustaquio; that, "out of spite and with a view to the eventual acquisition of the said property for himself and his men," defendant Jose Figueras tried all he could to built a drainage through11 the aforementioned property; that, in order to accomplish this purpose, and, using his official and political influence, defendant Figueras, then Under-Secretary of Labor, caused his co-defendant Cornelio S. Ruperto, an Assistant City Fiscal of

Manila, to prepare an opinion, dated June 13, 1949, which was signed by the City Fiscal, holding that the City of Manila has a right to construct said drainage, and, to this effect, make the necessary excavations, of about 70 centimeters in width, at the boundary line of said lot leased to Strebel and the lot belonging to Figueras; that, said opinion induced the city engineer of Manila to write to plaintiff Strebel the letter Exhibit B, dated June 22, 1949, reading:

"Republic of the Philippines
City of Manila
DEPARTMENT OF ENGINEERING AND PUBLIC WORKS

June 22, 1949

Mr. Emilio Strebel
Manila
Sir:

In connection with the drainage of a certain dominant estate on Buenos Aires which flows across a certain servient estate on Sta. Mesa Boulevard and which was closed by the construction of a gasoline station by the Standard Vacuum Oil Company on Santa Mesa Boulevard, I have the honor to inform you that our men will make an excavation on the strip of land lying between the lot of Mr. Jose Figueras on Buenos Aires and the gasoline station of the Standard Vacuum Oil Company on Sta. Mesa Boulevard for the purpose of laying a pipe across the said strip of land to connect the drainage of the dominant estate with the drainage of the servient estate occupied by the gasoline station towards the storm severs on Santa Mesa Boulevard. The excavation will be backfilled and I the ground restored to its original condition by our men after the pipe had been laid.

"The ownership of the strip of land which the excavation will be made a pipe will be laid by our men is reading to our information, under litigation between you and Mr. Antonio Isaac, letter is being addressed to you as

of the litigating parties.

Respectfully,

s/ ALEJO AQUINO
t/ ALEJO AQUINO”

and that plaintiff and his partner Primo Eustaquio, protested against the aforementioned proposed excavation and drainage, which, accordingly, was not made or construed

2. That on September 14, 1949: defendant Figueras by making use of his official and political connections,” was able to induce the Secretary of Justice to transfer temporarily, from the Bureau of Immigration to the Bureau of Prisons, one Dr. Manuel Hernandez, the husband of plaintiff’s step daughter; that, thereafter, Figueras, “and/or his adviser,” caused to be prepared the following letter, Exhibit E”

“December 9, 1949

(CONFIDENTIAL)

Hon. Primitive Lovina
Secretary of Labor
Manila

Dear Sirs

The undersigned have approached Secretary of Justice Rieardo Nepomuceno with the idea of requesting him to intervene between us and Under-secretary of Labor Jose Figueras with the end in view of settling family misunderstandings. Secretary Nepomuceno advised us to appeal to you. The origin and cause of these cases were previous personal affairs which led to serious family troubles and squabbles. In addition, there

were the party differences between us and Undersecretary Figueras.

"As
the election are now over and as we would like to be in peace with Mr. Figueras, we desire to ask your good self, knowing your interest in the welfare of common people like us, to intercede for us with Mr. Figueras so that he may forget our differences. We also desire to ask you to use your good offices looking towards the return of Dr. Manuel Hernandez from the Bureau of Prisons to the Bureau of Immigration where he is a regular Medi.cal Officer. We are confident that, with your influence and friendship with Mr. Figueras, he would consent to forget the past and let begones be bygones between us. On part, we promise to treat and the members of his family as real friends and I hope that his feelings towards us will be the same.

"Should you be as kind as to effect. This reconciliation, we will be ever grateful to you.

Yours truly,

EMILIO STREBEL
LEONOR TIANGCO DE STREBEL
MANUEL HERNANDEZ

CONFORME:

JOSE FIGUERAS"

which is said to be "coercive in nature and derogatory not only to Dr. Manuel Hernandez but also the herein plaintiff and his wife;" that upon failure to secure plaintiff's signature on said letter, "another one"—copy of which is attached to the complaint as Exhibit F—"was prepared and submitted at the instigation of defendant Figueras and at the behest of the then Secretary of Justice, for the signature of the

herein plaintiff, his wife and Dr. Manuel Hernandez" that said Exhibit F is of the following tenor:

"AGREEMENT

We, **JOSE FIGUEIRAS** and **MANUEL A. HERNANDEZ**, **OUT OF RESPECT AND CONSIDERATION** for our superior officers, the Honorable Secretary of Justice and the Honorable Secretary of Labor, have this date mutually agreed to bury whatever personal differences we may or might have.

I, MANUEL A. HERNANDEZ hereby promise to do all I can to inform my in-laws E. Strebel and Leonor S. Tiangco of this mutual agreement to convince them that **JOSE FIGUERAS IS** amenable to the return of their friendly relation to ask them to follow the same spirit and forget the past differences so that they can live together again as one harmonious family. It is understood that if Leonor S. Tiangco and or E. Strebel have heretofore filed any complaint in the Fiscals office or elsewhere against Jose Figueras, they will from now on withdraw said complaints;

"TO THIS END WE HAVE SIGNED THIS AGREEMENT.

Manila December 11th, 1949.

s/ MANUEL A. HERNANDEZ
t/ MANUEL A. HERNANDEZ
s/ LEONOR S. TIANGCO
t/ LEONGR S. TIANGCO
s/ E. STREBEL
t/ E. STREBEL

WITH MY CONFORMITY:

s/ JOSE FIGUERAS
t/ JOSE FIGUERAS
s/ OK.

Nepomuceno”

that after the foregoing “agreement” had been signed by plaintiff “just to please defendant Figueras,” said Dr. Manuel Hernandez was, upon instructions of the Secretary of Justice, returned to his former assignment in the Bureau of Prisons;

3. That, on or about, September 15, 1949, “making use of his official and political influence,” and with the cooperation of his former secretary, defendant Cornelio S. Ruperto, an Assistant City Fiscal of Manila, as well as “in connivance with the Director of Labor” which office was then held by defendant Felipe E. Jose, “and other employees in the Department and Bureau of Labor,11 defendant Figueras succeeded in securing the institution, against plaintiff Strebel, and his partner, Prime Eustaqul, of Criminal Case No. 11005 of the Court of First Instance of Manila, for allegedly compelling several employees to work more than eight (8) hours a days in violation of Commonwealth Act No, 444, in relation to Commonwealth Act No. 303, although before the filing of the information “the defendants collectively and singly knew that the allegations therein are false;11 that said criminal case was subsequently dismissed by the Court of First Instance of Manila for failure of the prosecution “to establish even a *prima facie* case against the accused”; and

4. That, prior thereto, defendant Cornelio Ruperto, in connivance with his co-defendant Jose Figueras, had secured the dismissal of two criminal cases against the “bodyguards and cohorts” of the latter, “altho the information in both cases were filed after careful in vestigation of fiscals of proven integrity.”

It is further alleged in the complaint that, through the foregoing series of acts, the defendants have “caused moral and mental suffering to the * * * plaintiff, his wife, and his entire family, and damage to his business in the amount of P15,000.00, besides actual damages in the amount of P1,500.00 paid to his attorney in defending himself from the malicious charge,” which sums plaintiff prays that the defendants be sentenced to pay 3ointly

and severally.

With reference to the first group, it should be noted, that, according to the very allegations of the complaint defendant Figueras went no further than to secure the opinion of the City Fiscal favorable to the construction of a drainage between his (Figueras) lot and that of Strebel, and a letter of the City Engineer informing Strebel of said proposed construction, *which was not undertaken,* or even began, in view of Strebel's opposition thereto. In other words, the plan to built said drainage was seemingly abandoned before plaintiff's property rights could be violated. There was nothing wrong, either legally or morally, in the desire of Figueras to seek an outlet for the water coming from his property. On the contrary, it is required by the elementary principles of health and sanitation. Besides, there is no allegation that any lot other than that of plaintiff Strebel was better suited for the purpose. Hence, we do not see how plaintiff could have a cause of action on this count.

Neither could he have any arising from the assignment of his wife's son-in-law from the Bureau of Prisons—to which he had been previously assigned temporarily, pursuant to Section 79(B) of the Revised Administrative Code—to tine Bureau of Immigration, for

1. The authority of the Secretary of Justice to make the assignment in question and the validity thereof, under said legal provision, are admitted. Hence, it is not claimed that said officer may be held civilly liable for the aforementioned assignment. This being the case, how can such responsibility be exacted from Figueras who, it is urged, merely instigated said assignment?

2. Even if we assumed the act complained of to be wrong or to have caused injury, the right of action hypothetically resulting therefrom, if any—on which we need not, and do not, express any opinion—would have accrued in favor of Dr. Hernandez—who is not a party in the present action—not plaintiff herein.

> "As a general rule, the right of recovery for mental

> suffering resulting from "bodily injuries is restricted to the person who has suffered the bodily hurt, and there can be no recovery for distress caused by sympathy for another's suffering, or for fright due to a wrong against a third person. So the anguish of mind arising as to the safety of others who may be in personal peril from the same cause cannot be taken into consideration.
>
> > '* * * damages are not recoverable for fright or shock even when sustained as result of willful act, unless such act was directed toward person or property of person seeking recovery; hence plaintiff; is not entitled to recover against administratrix of sister's murderer for fright or shock caused by viewing mutilated body of murdered sister. (Koontz v. Keller, 3 N.E. 2d 694, 52 Ohio App. 265)' "(25 C.J.S. S 67 and footnote P. 554)

The rule on this point, as stated in the American

Jurisprudence, is:

> "Injury or Wrong to Another.—In law mental. anguish is restricted as a rule, to such mental pain or suffering as arises from an injury or wrong *to the person himself*, as distinguished from that form of mental suffering which is the accompaniment of sympathy or sorrow for another's suffering or which arises from a contemplation of wrongs committed on the person of *another*. Pursuant to the rule stated, a husband or wife cannot recover for mental suffering caused by his or her sympathy for the other's suffering." (15 Am. Jur. PP. 597-598) (Italics supplied.)

In this connection, it should be noted that *plaintiff is not even related* to *Dr. Hernandez*. The latter's wife is a daughter of Mrs. Strebel by a p*revious marriage*. Hence, Dr. Hernandez is merely related by affinity, not to Strebel, but to a *relative* by affinity of said plaintiff. It would be extremely dangerous, apart from unjust, to sanction a recovery, by the plaintiff, of moral damages

for the temporary transfer of Dr. Hernandez. If the mental anguish allegedly suffered by plaintiff in consequence thereof ware sufficient to give him a cause of action therefor, there would be no valid legal reason to deny the same relief to any other person who might have thus been inconvenienced, such as the friends of Dr. Hernandez, and public officials similarly situated, as veil as those who may have been adversely affected by the deterioration, if any, in the service of the office or bureau which had been temporarily deprived of the services of said physician.

For the rest, we find in the letter, Exhibit E, and the "agreement", Exhibit F, both of which are transcribed in the foregoing pages, nothing "coercive" or "derogatory" to plaintiff herein, or which may give occasion for any material, mental or moral anguish or damage whatsoever.

As Regards the aots pertaining to the third group, the allegations pertinent thereto purport to establish that the defendants are guilty of the crime formerly known as false or malicious prosecution, defined and punished in Article 326 of the Penal Code of Spain, which reads:

> "The crime of false accusation or complaint is committed by any person who falsely charges another with acts which, if committed, would constitute an offense upon which a prosecution might be instituted by the Government on its own motion, if such charge be made to any executive or Judicial officer whose duty it is to investigate or punish such felony.
>
> "Nevertheless, no action shall be take against the person making the accusation or complaint except by virtue of a final judgment or order of dismissal by the court before which the offense charged shall have been tried.
>
> "The court shall order the prosecution of the person making the accusation or complaint whenever the principal case discloses facts sufficient to justify such prosecution."

It is noteworthy, however, that, pursuant to the said Article 326, as construed by this Court (U.S. v. Rubal, 37 Phil. 577; U.S. v. Barrera, h Phil. 4-61), an action for malicious prosecution may not be instituted unless the court, in dismissing the first case, explicitly orders the prosecuting attorney to proceed against the complainant for violation of said provision, and that no such directive has been made in the order dismissing Case Ho. 11005 of the Court of First Instance of Manila. Furthermore, in People v. Rivera (59 Phil. 236, 240) the decision of a lower court dismissing a case for malicious prosecution was affirmed upon the ground that "article 326 of the Codigo Penal does not appear in the Revised Penal Code which contains no offense denominated, 'acusacioa denuncia falsa' or its *equivalent*."

In order to circumvent this feature of the case, plaintiff says in his brief:

> "Plaintiff is evidently suing the defendant not on the ground of malicious prosecution arising from a criminal act but for misconduct or malfeasance arising from an action ex delicto or a tortious act." (p. 21, Brief for the Plaintiff-Appellant.)

By specific mandate of Article 2219 of the Civil Code of Philippines, however, moral damages may not be recovered in cases of crime or tort, unless either results or causes "physical injuries," which are lacking in the case at bar. Although the same- article permits recovery of said damages in cases of malicious prosecution, this feature: of said provision may not be availed of by the plaintiff herein, inasmuch as the acts set forth in the complaint took place in 1949, or before said Code became effective, and Articles h and 2257 thereof declare:

> "ART. 4.—Laws shall have no retroactive effect, unless the contrary is provided."
>
> "ART. 2257. Provisions of this Code which attach a civil sanction or penalty or a deprivation pf rights to acts or omissions which were not penalized by the former laws, are not applicable to those who, when

> said laws were in force, may have executed the act or incurred in the omission forbidden or condemned by this Code.
>
> "If the fault is also punished by the previous legislation, the less severe sanction shall be applied.
>
> "If
> a continuous or repeated act or omission; was commenced before the beginning of the effectivity of this Code, and the same subsists or Is maintained or repeated after this body of laws has become operative, the sanction or penalty prescribed in this Gode shall be applied, even though the previous laws may not have provided any sanction or penalty therefor." (Underscoring supplied.)

Little need be said relative to the acts falling under the fourth group. The allegation in the complaint to the effect that the informations in the cases against "the bodyguards and cohorts" of Figueras "were filed after careful investigation of fiscals of proven integrity," is not enough to render the dismissal of said cases either illegal or improper, for additional facts or evidence may have been found or secured by the prosecution, after the institution of said cases, to show that the same are devoid of merit. Apart from this, there is no allegation that plaintiff was the complainant or had any particular interest in said cases. Hence, even if the dismissal thereof were unlawful or wrongful, plaintiff would have no cause of action by reason thereof.

It is clear, therefore, that the averments made in the so-called first cause of action of plaintiff herein do not entitle him to the relief prayed for: thereunder.

In support of his second cause of action, plaintiff alleges that, "with a view to further injuring" him "and besmirching his good name in the community and waging a cleavage in the harmonious relation between Eustaquio & Co. and its laborers," defendants Felipe E. Jose and Cornello S. Ruperto issued a press statement to the effect that plaintiff Strebel and his partner, Eustaquio had flagrantly violated

the provisions of the Eight-Hour Law and that said Criminal Case No. 11005 had been dismissed by the court on a flimsy ground; and that this statement had "caused moral and mental suffering to the herein plaintiff and damage to his business in the amount of P5,000.00 which he prays "that the defendants, particularly Felipe Jose and Cornelio S. Ruperto be condemned jointly and severally to pay" to him. The aforementioned statement is allegedly contained in the following news item, marked Exhibit L, and published in the Evening News of September 19, 1950:

"JOSE, FISCAL RAP DECISION

Director of Labor Felipe B. Jose branded this noon as highly prejudicial to the interest of labor the decision of the court of first instance dismissing the case filed by five laborers against two owners of gasoline station's, who according to the director flagrantly Violated the provisions of the eight-hour labor law.

"The director announced that he and the city fiscal will appeal the case to the supreme court until the two violators are punished accordingly.

"Cornelio S. Ruperto, assistant city fiscal, charged that, without taking into consideration the pertinent portions of Commonwealth Act the court dismissed the case on the flimsy argument of the counsel for the defendants that affidavits of the laborers shoved the latter never complained against the action of the owners, Emilio Strebel and Primo Eustaquio to anybody, including the department of labor.

"Ruperto declared that the argument which cause the dismissal of the case is impertinent and immaterial in the instant case, because, he said the of the law on the matter is clear and implicit.

"Section 6 of the law says that 'any agreement or contract between the employer

> and the labors or employee contrary to the provisions of this act shall be null and void ab initio therefore, Ruperto said, the agreement between the five laborers and the owners is illegal and that the action of
>
> the latter is subject to the penal provision of the said law
>
> "According
> to the case. Eduardo Gonzales, Emilio Samson, Rodolfo Quintos, Pedro Bensira, and Silverio, Trinidad were compelled to work more than the required eight hours not secured from the department of labor which requires overtime payment for work rendered in excess of eight boors,
>
> "It
> is recalled that in the celebrated Cuevo-Barrado case the adverse decision of the judge who handled the case was appealed to the supreme court which accordingly reversed the decision In favor of the laborer. The action of the judge aroused the ire of the late President Quezon who ordered the immediate dismissal of the judge." (Record on Appeal, pp. 131-133).

This news item mentions, neither the number of the case referred to, nor the names of the persons accused therein, Moreover, it merely contains a criticism of the action taken by the court. The reference, therein imputed to the Director of Labor, to the flagrant violation of the eight-hour labor law by the accused, was a mere reiteration of the theory of the Bureau of Labor, which the; prosecution had adopted by filling the information in said case. Being a matter of court record, which had been taken up at the hearing held publicly, and settled in a decision already promulgated, said theory was open for public consumption, and, hence, an allusion thereto or statement thereof, in order to justify said criticism, is not actionable.

Again, said allusion was not made by defendant Ruperto, who, the news item shows, said nothing against the plaintiff. It is apparent, therefore, that as a whole, the allegations made in support of the second cause of action do not establish a right of action against him.

Moreover, there is absolutely no allegation under said cause of action connecting defendant Figueras with the statement already referred to or rendering him liable therefor.

The so-called third cause of action is premised upon allegations to the effect that, acting in cooperation and confabulation with Assistant City Fiscal, Andres Reyes, and had filed, one Antonio P. Isaac, defendant Jose Figueras on December 30, 1949, Criminal Case No. B-53033-A of the Municipal Court of Manila against plaintiff Strebel, his wife Leonor S. Tiangeo and Primo Eustaqulo for unjust vexation, although there was no evidence in support thereof, for which reason the case was dismissed on March 18, 1950; and that said unjust, malicious and frivolous acts had

"caused moral and mental suffering to the herein plaintiff to the tune of P10,000.00, and actual damage of P500." Apart from seeking judgment for these sums, plaintiffs pray:

> "(*d*) That all the defendants be condemned jointly and severally to pay the plaintiff exemplary damages;
>
> "(*e*)
> That an order be issued directing the proper authorities to prosecute all of them for malicious prosecution and libel or such other crime as this Honorable Court may deem proper in filing and pressing the false information and in issuing slandertius and libelous language after his acquittal;
>
> "(*f*) That thereafter proper
> recommendation be made to the proper authorities for their immediate suspension and/or dismissal from the service; and
>
> "(*g*)
> That plaintiff be granted such other and further relief as this Honorable Court may deem Just and equitable in the premises." (Record on Appeal, p. 23.)

It is not alleged in the complaint that defendants Felipe Josa and Cornelio Ruperto had any participation whatsoever in the filing of the information for unjust vexation. Obviously, they are exempt from liability in connection therewith. Upon the other hand, the assistant city fiscal who signed said information and Antonio Isaac, the offended party therein, have not been included as defendants in the case at bar. At any rate, insofar as defendant Figueras is concerned, the situation as regards the third clause of action is substantially identical to that obtaining under the third set of facts alleged in support of the first cause of action. What has been said above in relation to the aforementioned set of facts is equally applicable, therefore, to the third cause of action and suffices to demonstrate that the allegations thereunder do not establish the existence of a right of action In favor of plaintiff herein.

WHEREFORE, the order appealed from Is hereby affirmed, with the costs of this instance against plaintiff-appellant. It is so ordered.

Paras, C.J., Pablo, Bengzon, Jugo, Bautista Angelo, Labrador and *Reyes, J.B.L., JJ.* concur.

Mr. Justice Padilla took no part.

Mr. Justice Alex Reyes took no part.

Mr. Justice Marceliano Montemayor took no part.

Date created: July 19, 2017