100 Phil. 491

[G.R. No. L-8706. December 14, 1956]

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. JULIAN L. TEVES, DEFENDANT AND APPELLEE.

[G.R. No. 8813]

THE PHILIPPINE BANK, PLAINTIFF AND APPELLANT VS. JULIAN L. TEVES, DEFENDANT AND APPELLEE

D E C I S I O N

CONCEPCION, J.:

These are two appeals from one and the same decision of the Court of First Instance of Negros Oriental, in civil case No. 2678 thereof.

On Febraury 13, 1952, the same was instituted by the Philippine National Bank, for the recovery of two promissory notes of defendant Julian L. Teves, in the aggregate sum of P3,130.00, plus attorney's fees and costs. Simultaneously, plaintiff filed a verified ex parte motion for a writ of preliminary attachment, which was granted by the court the next day. In due course, defendant filed an answer alleging that the sum of money delivered to him by the plaintiff consisted of valueless notes, which were not legal tender, and setting up a counter-claim for P20,000.00, for moral damages on account of the allegations of said ex parte motion, which were branded as defamatory and absolutely false. After appropriate proceedings, decision was rendered, the dispositive part of which is of the following tenor:

> "Premises considered, the Court hereby holds and so orders: "(1) For the defendant Mr. Julian L. Teves to pay to .the plaintiff, thru the Iatter's Negros Oriental Agency with office in Dumar guete City, the following amounts: One thousand four hundred eighty-nine pesos (Pl,489.00) in full payment of the loan of P3,130.00 released in emergency notes; Twenty pesos (P20.00) for the filing

fees; and One hundred forty-eight and 90/100 pesos (P148.90) as attorney's fees in accordance with the promissory notes signed by defendant;

"(2) For the dismissal of the counter-claim of defendant for moral damages of P20,000.00;

"(3) For the dismissal of the claim of Pl,000.00 by defendant for attorney's fees, said defendant having caused the bringing of this action by reason of his refusal to pay unless so ordered by the Court.

"No pronouncement is made as to the expenses incurred by plaintiff in relation to the attachment of defendant's properties, said attachment being unfounded and unjustified."

Both parties have appealed from said decision and the questions for determination by this Court are: (1) whether the sums of money received by the defendant from the plaintiff were legal tender or not; (2) in the affirmative case, what amount is due from the defendant under his aforementioned promissory notes; and (3) whether the defendant should recover moral damages from the plaintiff.

With reference to the first question, defendant testified that the consideration for his aforementioned promissory notes was paid to him by the plaintiff in emergency currency, which the people in the mountains, where he and his family stayed, for some time, refused to receive, and that part of said notes were destroyed, when his house was consumed by fire. The lower court found correctly that, this notwithstanding, defendant is bound to comply with the obligation set forth in said promissory notes. Indeed, his promissory note Exhibit C, for P2,235.00, is dated April 23, 1942. His other promissory note Exhibit D, for P895.00, is dated May 18, 1942. At that time, the province of Negros Oriental was still unoccupied by the Japanese, who landed therein on May 26, 1942. Hence, it is not claimed that the amounts represented by said promissory notes were paid by the plaintiff in Japanese military notes. What is more, the very defendant testified that said payment was made in "emergency notes", referring to the currency which the officers of the Commonwealth in unoccupied areas were authorized to issue by President Quezon before he left the Philippines in 1942. Said emergency notes were then valid and legal tender. Otherwise, the same would not have been accepted by the defendant. In the language of the lower court:

> * * * That these so-called 'Emergency Notes' were valid and can be implied further from the fact that immediately after liberation, the President of the Commonwealth issued an Executive Order No. 25, dated November 18, 1944, which prohibited the *further* use and circulation of such kind of 'notes' from said date (see Monde jar *vs*. Nicolo, 43 Off. Gaz. No. 12, 5099; De Asis *vs*. Melendreras et al., C.A. 44 Off. Gaz. No. 9, 3327). Moreover, the fact that the government *redeemed* such 'Emergency Notes' under the provisions of Republic Act No. 369 in relation to Republic Act No. 22, is additional proof that the said. 'Notes' were considered as legal tender at the time that they were printed and issued." (Record on Appeal, p. 17.) (Italics supplied.)

Obviously, the alleged refusal of some people to receive said emergency notes from the defendant and the alleged destruction thereof, while in his posession, by fire, affects neither the validity of the promissory notes in question, nor plaintiffs right to demand payment thereof. The second question was decided by the lower court in the light of the spirit of Republic Act No. 369, entitled "An Act providing for the redemption of emergency and guerrilla currency notes registered and deposited under the provisions of Republic Act Numbered Twenty-two, appropriating funds therefor, and for other purposes." Applying paragraph (6) of section 1 of said Act, reading:

> "For holders of the following registered post-guerrilla notes one hundred *per centum* for the first five hundred pesos; fifty per centum for all amounts in excess of five hundred pesos up to one thousand pesos; thirty *per centum* for all amounts in excess of one thousand pesos up to ten thousand pesos; and fifteen *per centum* for all amounts in excess of ten thousand pesos, with pre ference to the payment in favor of holders of small amounts."

the lower court concluded that P3,130 in emergency notes is equivalent to P1,489 in present currency and sentenced the defendant to pay this sum to the plaintiff.

Both parties concede the applicability of said Act of Congress, but defendant assails the computation of the lower court as erroneous, and asserts that the amount collectible by the plaintiff is Pl,389 only, whereas the latter contends that, instead of invoking subdivision (*b*) of section 1 of Republic Act No. 369, the lower court should have applied subdivision (*a*) of the same section, pursuant to which holders of emergency currency issues shall be

paid in post liberation currency at the rate of one hundred (100%) *per centum*.

It is, however, clear from the language of said subdivision (*b*) of section 1, that the same refers to holders of "guerrilla" notes, to which class those received by the defendant from the plaintiff did not belong. As already adverted to, the promissory notes in question were issued, and the consideration therefor was received by the defendant from the plaintiff, *prior* to the military occupation of Negros Oriental by the Japanese. At that time, there could have been, and there were, neither guerrillas, nor guerilla notes, in Negros Oriental. What is more, defendant's evidence positively shows that said consideration was delivered to the defendant in "emergency" notes, which are the subject-matter of subdivision (*a*) of section 1, pursuant to which "holders of * * * emergency currency issues" shall be paid at the rate of "one hundred (100%) *per centum*". Obviously, therefore, the plaintiff is entitled to recover the face value of the said notes, or the aggregate sum of P3,130.00 in present currency.

The lower court decided the third question in favor of the plaintiff and against the defendant upon the ground; (*a*) that, by his inaction, the latter had waived his objection to the irregularity in the issuance of the writ of preliminary attachment; (*b*) that, under the facts of the case, defendant would be entitled only to actual damages, which have not been proven; and (*c*) that the false and defamatory character of the allegations in plaintiff's *ex parte* motion for a writ of preliminary attachment, do not warrant a recovery of moral damages, said motion being in the nature of a privileged communication.

Said motion of the plaintiff was granted because of the averment therein to the effect "that the defendant has removed or; disposed of his properties, and is about to do so, with intent to defraud his creditors, especially the plaintiff herein". Defendant established by his testimony, which has not been contradicted, that this allegation is not true. Moreover, it appears that the defendant is the owner of extensive lands and has a sugar quota of about 20,000 piculs a year; that he had been municipal mayor and provincial governor for several terms that he was a member of Congress once; and that he is a prominent member of the community, which regards him with great respect. We note, however, that the main allegation in his counter-claim relative to the moral damages he seeks to recover is:

> 3. "That the foregoing allegations by plaintiff in its aforesaid motion *ex parte* for the issuance of a writ of preliminary attachment, are defamatory and

> absolutely false, and have no foundation of truth whatsoever, plaintiff knowing them to be false; have greatly embarrassed and hurt defendant's position in the social, political and business world; have exposed and placed defendant to public ridicule; and! have caused him great and extreme mental anguish and moral suffering, to the value of not less than Twenty thousand pesos (P20,000.00).
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> 4. "That to defend defendant's honor and for the purpose of securing the present redress for the wrong done him by plaintiff, defendant has to secure attorney's services at P1,000.00."

Upon the other hand, testifying thereon, he said:

> "R. Una manana, se me acerc6—no se, no le he conocido, que es encargado del Sheriff—me hablo sobre esa cuenta y juntamente dijo, "Esa casa voy a embargar.' Le pregunte, 'Que cuenta es esa?'; me contesto, 'Esta cuenta del banco.' Le dije, 'Mejor que se aclare esto ante los tribunales." Entonces, me acerco el driver y me dijo que iba a embargar mi automovil. Entonces, dije, 'No lo toque el coche; porque si no, a ver si ocurre algo, no ya a punetazoes sino que lo llevare a los tribunales.' Entonces, cogi el coche y me marche y *nadia mas me ha molestado*" (p. 22, ten.) (Italics supplied.)

In other words, defendant's answer relies upon the falsity of the averments in plaintiff's motion as the cause for his alleged mental anguish and moral suffering, whereas his testimony stresses the embarrassment occasioned by the alleged attempt of a deputy sheriff to attach a car of the defendant. It will be observed, also, that a driver (defendant did not say whose driver he was), merely told *him* that said officer wanted to levy attachment upon defendant's car. It does not appear that the deputy sheriff had conveyed such intent, either to the defendant or to said driver, who was not placed on the witness stand and might have simply jumped at a conclusion, the accuracy of which we are not in a position to verify. Again, the record does not disclose any overt act of said officer to seize the aforementioned car. In fact, defendant drove it away without being molested, either then, or at any time thereafter.

Considering, therefore, that defendant appears to have suffered no actual damages; that

the assessment of moral damages "is left to the discretion of the court, according to the circumstances of each case." (Art. 2216, Civil Code of the Philippines); that *the writ of preliminary attachment was never executed;* that we do not know what specific acts, if any, were performed by the deputy sheriff in his alleged attempt to levy attachment upon the car of defendant herein; that his debts to the plaintiff drew no interest whatsoever; and that said debts had been outstanding for about ten (10) years, when this case was filed, and about thirteen (13) years, when the .decision appealed from was rendered, we are not prepared to hold that the lower court had erred, or abused its discretion, in not sentencing the plaintiff to pay moral damages.

Wherefore, with the modification that defendant shall pay to the plaintiff the sum of P3,130.00 in present currency, plus P313.00 by way of attorney's fees, the decision appealed from is hereby affirmed, in all other respects, with the costs of both instances against the defendant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

Date created: October 13, 2014