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SECOND DIVISION

[G.R. NO. 139436. January 25, 2006]

ENRICO B. VILLANUEVA AND EVER PAWNSHOP, PETITIONERS, VS. SPS. ALEJO SALVADOR AND VIRGINIA SALVADOR, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court is the July 16, 1999 decision[1] of the Court of Appeals (CA) in *CA-G.R. CV No. 49965,* which affirmed in toto an earlier decision[2] of the Regional Trial Court (RTC) at Pasig in Civil Case No. 62334.

The pertinent facts:

On December 20, 1991, herein respondents, the spouses Alejo Salvador and Virginia Salvador (Salvadors, collectively), secured a loan of P7,650.00 from petitioner Ever Pawnshop owned and managed by co-petitioner Enrico B. Villanueva (Villanueva). On January 23, 1992, the Salvadors took out a second loan of P5,400.00 pledging, just like in the first loan transaction, jewelry items. Pawnshop Ticket No. 29919, covering the first loan, indicated April 10, 1992 as the last day to redeem the jewelries pawned, whereas the redemption period for the items given as security for the second loan under Pawnshop Ticket No. 30792 fell on May 22, 1992.

The separate redemption periods came and went, but the Salvadors failed to redeem the pawned pieces of jewelry. Nonetheless, on June 1, 1992, their son paid Ever Pawnshop P7,000.00, the amount to be applied against the first loan of P7,650.00. On account of this development, Pawnshop Ticket No. 29919 was cancelled and replaced by Pawnshop Ticket No. 34932. Vis-a-vis the second loan, Ever Pawnshop agreed to the extension of the maturity date to June 30, 1992, provided the Salvadors pay 20% of their second loan obligation on or before June 4, 1992, failing which the securing items shall be auctioned as scheduled.

Unlike in the first loan, however, a new pawn ticket was not issued for the second loan.

In the meantime, Ever Pawnshop issued a notice announcing the public auction sale on June 4, 1992 of all January 1 to 31, 1992 unredeemed pledges. The notice appeared in the Classified Ads Section of the *Manila Bulletin* on June 4, 1992, the very day of the auction itself.

On July 1, 1992, the Salvadors repaired to the pawnshop in a bid to renew the second loan by tendering the aforesaid 20% of the amount due thereon, only to be informed that the pledged jewelry had already been auctioned as scheduled on June 4, 1992. As found by the CA, however, pieces of the pawned jewelry items were still in the shop, [3] indicating that Ever Pawnshop either bought some of the unredeemed pledges or did not sell them.

A month after, Mrs. Salvador attempted to redeem the jewelry items pledged for the first loan, as renewed, but all she got in response were unclear information as to their whereabouts.

On August 7, 1992, Mr. Salvador tendered payment of the amount due on both loans, with a demand for the return of the jewelry thus pledged. Ever Pawnshop, however, refused to accept the tender.

Such was the state of things when, on August 11, 1992, at the RTC-Pasig City, the Salvadors filed a complaint for damages against Villanueva and Ever Pawnshop arising from the sale without notice of the two (2) sets of jewelry pledged as security for both loans. The complaint, docketed as Civil Case No. 62334, was eventually raffled to Branch 164 of the court.

Barely two days after Villanueva et al., received summons, their counsel informed the Salvadors of his clients' willingness to accept payment heretofore tendered for the redemption of the jewelry pledged to secure the first loan. The Salvadors, however, turned down this belated offer.

Answering, Villanueva and Ever Pawnshop, as defendants a quo, averred, *inter alia,* that by letters dated March 23, 1992 and May 5, 1992, Ever Pawnshop reminded the Salvadors of the maturity dates and redemption period of their loans. Also alleged in the answer with counterclaim for damages was the publication in the June 4, 1992 issue of the *Manila Bulletin* of the notice of public auction of all unredeemed pledges from January 1 to 31, 1992.

Eventually, in a decision[4] dated January 25, 1995, the trial court, on its finding that the set of jewelry covered by the renewed first and second loans were sold without the necessary notice, rendered judgment for the Salvadors, to wit:

> WHEREFORE, the Court hereby renders judgment in favor of the plaintiffs [Salvadors] and against the defendants [Villanueva and Ever Pawnshop]. Defendants are hereby ordered to pay to the plaintiffs:
>
> 1. The sum of P20,000.00 by way of moral damages;
> 2. The sum of P5,400.00 as the value of the jewelry sold under the second loan;
> 3. The sum of P5,000.00 as and for attorney's fees; and
> 4. The costs of suit.
>
> Defendants are also ordered to restore to the possession of the [Salvadors] the jewelry that they pawned under the first loan, covered by pawn ticket nos. 29919 and 34932, upon payment by the plaintiffs of the redemption price due last 10 August 1992.
>
> The counterclaim of the defendants is dismissed.
>
> SO ORDERED. (Words in bracket added.)

Therefrom, petitioners went on appeal to the CA whereat their recourse was docketed as *CA-G.R. CV No. 49965.*

As stated at the threshold hereof, the CA, in its decision of July 16, 1999, affirmed *in toto* that of the trial court, the affirmance being predicated on the following main justifications:

> As the trial court correctly pointed out, the May 5, 1992 "List of Notified Clients" (Exhs. 6, 6-A, 6-B) . . . including the names of the [respondents] and Ticket Nos. 29919 and 30792 is not proof that notices were actually sent to [respondents]. While the list contains 132 names, only 98 [postage] stamps were purchased, hence, it cannot be determined who among the 132 people were sent notices.
>
> And as surmised by the trial court, the set of jewelry pledged to secure the first loan must have been auctioned, as scheduled on May 7, 1992, but that by

> mistake the pledge was renewed (on June 1, 1992), that is why it was only after the [petitioners] received the summons in late August 1992 when probably they recovered the pledged jewelry that they expressed willingness to accept the [respondents'] tender of payment for the redemption of said pledge jewelry securing the first (renewed) loan.
>
> Admittedly, the [respondents] did not pay their loans on maturity. But [petitioners] breached their contractual and legal obligation to inform the [respondents] of the public auction of the jewelry securing it.
>
> Furthermore, [petitioners] failed to comply with the requirements . . . that the notice must be published during the week preceding the sale in two daily newspapers of general circulation in the city or municipality. The paid notice of public auction to be held on June 4, 1992 by Ever Pawnshop was published only on even date, and only in one newspaper, the Manila Bulletin. And particularly with respect to the second loan, why was the jewelry pledged to secure it included in the June 4, 1992 auction when plaintiffs had up to that date to pay 20% of the amount due thereunder as a condition to its renewal?
>
> xxx xxx xxx
>
> Anent the questioned award of moral damages: Even assuming that [respondents'] failure to pay their obligation on maturity amounts to contributory negligence, that does not abate the award of moral damages in their favor given the [petitioners'] failure to comply with the contractual and statutory requirements before the pledged jewelry was auctioned which failure amounts to misconduct contemplated in Article 2220 of the New Civil Code – basis of the award thereof (Laguna Tayabas Bus Company v. Cornista 11 SCRA 181- 182 (Words in bracket added)

Hence, this petition on the following issues:

1. Whether the items of jewelry under the first loan were actually sold by the petitioners;
2. Whether valid notice of the sale of the pledged jewelry was effected;
3. Whether the award of P20,000.00 as moral damages and P5,000.00 as attorneys fees are proper; and

4. Whether the trial and appellate courts erred in ordering both the petitioners to pay damages.

Under the first issue, petitioners fault the CA in holding that the jewelry pledged under the first loan was sold by them.

Doubtless, the first issue raised by petitioners relates to the correctness of the factual finding of the CA – confirmatory of that of the trial court – on the disposition of the set of jewelry covered by Pawnshop Ticket No. 34932. Such issue is beyond the province of the Court to review since it is not its function to analyze or weigh all over again the evidence or premises supportive of such factual determination.[5] The Court has consistently held that the findings of the CA must be accorded great weight and shall not be disturbed on appeal, save for the most compelling and cogent reasons,[6] like when manifest error has been committed.[7]

As nothing in the record indicates any of such exceptions, the factual conclusion of the CA that petitioners indeed sold the jewelry items given to secure the first loan must be affirmed.

Indeed, petitioner pawnshop expressed willingness to accept tender of payment and to return the pawned jewelry only after being served with summons. Apparently, Ever Pawnshop had found a way to recover said jewelry by that time. If, as aptly observed by the CA, the jewelry had never been sold, as petitioners so allege, but had been in their possession all along, they could have provided a plausible explanation for the initial refusal to accept tender of payment and to return the jewelry. Petitioners' belated overture to accept payment after spurning the initial offer to pay can only be due to the fact that, when respondents offered to pay the first time around, they (petitioners) no longer had possession of the jewelry items in question, having previously disposed of them.

Moving on to the second issue, petitioners argue that the respondents were effectively put on notice of the sale of the pledged jewelries, the maturity date and expiry date of redemption period of the two loans being indicated on the face of each of the covering pawnshop tickets. Pressing the point, petitioners invite attention to the caveat printed on the dorsal side of the tickets stating that the pledged items shall be auctioned off in the event they are not redeemed before the expiry date of the redemption period.

We are not persuaded by petitioners' faulty argument.

Section 13 of Presidential Decree (P.D.) 114, otherwise known as the Pawnshop Regulation Act, and even the terms and conditions of the pledge itself, accord the pawner a 90-day grace period from the date of maturity of the loan obligation within which to redeem the pawn. But even before the lapse of the 90-day period, the same Decree requires the pawnbroker to notify the defaulting debtor of the proposed auction sale. Section 14 thereof provides:

> Section 14. Disposition of pawn on default of pawner.- In the event the pawner fails to redeem the pawn within ninety days from the date of maturity of the obligation . . ., the pawnbroker may sell . . . any article taken or received by him in pawn: Provided, however, that the pawner shall be duly notified of such sale on or before the termination of the ninety-day period, the notice particularly stating the date, hour and place of the sale.

However, over and above the foregoing prescription is the mandatory requirement for the publication of such notice once in at least two daily newspapers during the week preceding the date of the auction sale.[8]

The CA cannot really be faulted for making short shrift of petitioners' posture respecting their alleged compliance with the notice requirement in question. As it were, petitioner Ever Pawnshop, as determined by the CA, only caused publication of the auction in one newspaper, i.e., the Manila Bulletin, and on the very day of the scheduled auction sale itself, instead of a week preceding the sale as prescribed by Section 15 of P.D. 114. Verily, a notice of an auction sale made on the very scheduled auction day itself defeats the purpose of the notice, which is to inform a pawner beforehand that a sale is to occur so that he may have that last chance to redeem his pawned items.

This brings us to the issue of the award of moral damages which petitioners correctly tag as erroneous, and, therefore, should be deleted.

While proof of pecuniary loss is unnecessary to justify an award of moral damages, the amount of indemnity being left to the sound discretion of the court, it is, nevertheless, essential that the claimant satisfactorily proves the existence of the factual basis of the damages[9] and its causal connection to defendant's wrongful act or omission. This is so because moral damages, albeit incapable of pecuniary estimation, are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the

wrongdoer.[10] There is thus merit on petitioners' assertion that proof of moral suffering must precede a moral damage award.[11]

The conditions required in awarding moral damages are: (1) there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant must be the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[12]

While there need not be a showing that the defendant acted in a wanton or malevolent manner, as this is a requirement for an award of *exemplary* damages,[13] there must still be proof of fraudulent action or bad faith for a claim for moral damages to succeed.[14] Then, too, moral damages are generally not recoverable in culpa contractual except when bad faith supervenes and is proven. [15]

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill-will that partakes of the nature of the fraud.[16] And to the person claiming moral damages rests the onus of proving by convincing evidence the existence of bad faith, for good faith is presumed.[17]

As aptly pointed out by petitioners, the trial court concluded that the respondents' "cause of action arose merely from the negligence of the herein [petitioners]."[18] It may be that gross negligence may sometimes amount to bad faith.[19] But what is before us is a matter of simple *negligence* only, it being the trial court's categorical finding that the case came about owing to petitioners' mistake in renewing the loan when the sale of the article to secure the loan had already been effected. Wrote the trial court:

> "What must have happened next was that the jewelry under the first loan was sold, as scheduled, on 7 May 1992. Due to an oversight, the defendants mistakenly renewed the first loan on 1 June 1992, issuing pawn ticket number 34932 in the process."[20] [Emphasis supplied]

The CA's reliance on Article 2220 of the Civil Code in affirming the award of moral damages is misplaced. Said article provides:

> Art. 2220. *Willful* injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted *fraudulently or in bad faith.*

Clear it is from the above that before moral damages may be assessed thereunder, the defendant's act must be vitiated by bad faith or that there is willful intent to injure. Simply put, moral damages cannot arise from simple negligence.

The award of attorney's fees should, likewise, be struck down, both the CA and trial court having failed to explain respondents' entitlement thereto. As a matter of sound practice, an award of attorney's fee has always been regarded as the exception rather than the rule. Counsel's fees are, to be sure, not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are assessed only in the instances specified in Article 2208 of the Civil Code.[21] And it is necessary for the trial court to make express findings of fact and law that would bring the case within the exception. In short, the factual, legal or equitable justification for the award must be set forth in the text of the decision.[22] The matter of attorney's fees cannot be touched only in the *fallo* of the decision, else the award should be thrown out for being speculative and conjectural.[23]

Certainly not lost on the Court is the fact that petitioners, after being served with summons, made an attempt to obviate litigation by offering to accept tender of payment and return the jewelry. This offer, however belated, could have saved much expense on the part of both parties, as well as the precious time of the court itself. The respondents chose to turn down this offer and pursue judicial recourse. With this in mind, it hardly seems fair to award them attorneys fees at petitioners' expense.

The final issue relating to the question of whether or not both respondents are liable for damages has, for all intent and purposes, been rendered moot and academic by the disposition just made. We need not dwell on it any further. Besides, this particular issue has only made its debut in the present recourse. And it is a well-entrenched rule that issues not raised below cannot be resolved on review in higher courts.[24] A question that was never raised in the court below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.[25]

WHEREFORE, with the **MODIFICATION t**hat the awards of moral damages and attorneys

fees are deleted, the decision under review is hereby **AFFIRMED.**

No pronouncement as to cost.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.*, concur.

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[1] Penned by Associate Justice Conchita Carpio-Morales (now a member of this Court), with Associate Justices Artemon B. Luna and Bernardo P. Abesamis (both retired), concurring; Rollo, pp. 8-18.

[2] Per Judge Santiago Ranada, Jr., (now a member of the Court of Appeals); Rollo, pp. 44-49.

[3] Page 3 of the CA decision, Rollo, p. 35.

[4] Rollo, pp. 44-49.

[5] *PT & T vs. Court of Appeals,* 412 SCRA 263 (2003).

[6] *Republic vs. Court of Appeals,* 349 SCRA 451 (2001).

[7] *Benguet Exploration, Inc. vs. Court of Appeals,* 351 SCRA 445 (2001); *International Corporate Bank vs. Gueco,* 351 SCRA 516 (2001); *Manufacturer's Building, Inc. vs. Court of Appeals,* 354 SCRA 521 (2001).

[8] Section 15, Public auction of pawned articles. – No pawnbroker shall sell or otherwise dispose of any article … received in pawn or pledge except at a public auction …. , nor shall any such article or thing be sold or disposed of unless said pawnbroker has published a notice once in at least two daily newspapers printed in the city or municipality during the seek preceding the date of such sale. … P.D. 114.

[9] Art. 2217, The Civil Code.

[10] *San Miguel Brewery, Inc. v. Magno,* 21 SCRA 292 (1967).

[11] *People v. Manero Jr.,* 218 SCRA 85 (1993).

[12] *Citytrust Banking Corporation v. Villanueva,* 361 SCRA 446 (2001). Art. 2219 of the Civil

Code states that moral damages may be recovered in the following and analogous cases, such as in delicts and quasi-delicts resulting or causing physical injuries, lascivious acts malicious prosecution or where defendant willfully caused loss or injury to plaintiff in a manner contrary to morals, good customs and public policy.

[13] Art. 2232, The Civil Code.

[14] *Mirasol vs. Court of Appeals,* 351 SCRA 44 (2001); Alim vs. Court of Appeals, 200 SCRA 450 (1991); PNB vs. Court of Appeals, 159 SCRA 433 (1988); Capco v. Macasaet, 189 SCRA 561 (1990); SIA vs. Court of Appeals, 222 SCRA 24 (1993).

[15] *Morris vs. Court of Appeals,* 352 SCRA 428 (2001).

[16] *Francisco vs. Ferrer, Jr.,* 353 SCRA 261 (2001).

[17] *Id.*

[18] Decision, p. 5; Rollo, p. 48.

[19] *BPI Investment Corp. vs. D.G. Carreon Commercial Corp.,* 371 SCRA 58 (2001).

[20] Decision, p. 3; Rollo, p. 46.

[21] *Padillo vs. Court of Appeals,* 371 SCRA 27 (2001).

[22] *PAL vs. Miano,* 242 SCRA 235 (1995); *Scott Consultants & Resource Dev't Corp. vs. Court of Appeals,* 242 SCRA 393 (1995).

[23] *DBP vs. Court of Appeals,* 262 SCRA 245 (1996), citing cases.

[24] *Magellan Capital Management Corp. vs. Zosa,* 355 SCRA 157 (2001).

[25] *Safic Alcan and Cie vs. Imperial Vegetable Oil Co., Inc.,* 355 SCRA 559 (2001); *People vs. Chua,* 356 SCRA 255 (2001); *Sanado vs. Court of Appeals,* 356 SCRA 546 (2001).

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