

**NICETA MIRANDA-RIBAYA AND LUIS CARBONELL RIBAYA,
PETITIONERS, VS. MARINO BAUTISTA, ENCARNACION BAUTISTA
AND THE COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-49390. January 28, 1980

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court modifies the decisions of the trial court and of the Court of Appeals insofar as they denied petitioners' claim for damages and awards to petitioners moral and exemplary damages in the amount of 25% of the principal sum adjudged in their favor for the mental anguish and suffering undergone by them as a result of the defraudation wantonly, oppressively and malevolently committed by private respondents and by way of example and correction for the public good.

In the decision of the Court of Appeals,[1] the facts of the case as lifted from the decision of the Court of First Instance are stated, as follows:

"Mrs. Niceta Miranda-Ribaya was engaged sometime in 1968 in the pawnshop business and in the buying and selling of jewelry. Sometime prior to April 23, 1968 one of her agents, Mrs. Josefina Roco-Robles, informed her that a millionaire logger by the name of Marino Bautista was interested to buy big diamond stones. Acting upon this information, Mrs. Ribaya accompanied by her agent, Mrs. Robles, decided to drop by the house of Mr. and Mrs. Marino Bautista on April 23, 1968 at La Salle Street, Greenhills, Mandaluyong, Rizal. Mrs. Ribaya was impressed by the residence of the Bautistas and concluded within herself that the Bautistas were indeed millionaires as represented by her agent, Josefina. On that occasion both Mr. and Mrs. Bautista were present together with Gloria Duque, the secretary of Mr. Bautista, and the couple's daughter, Teresita. Mrs. Ribaya then offered to sell to the Bautistas ten (10) pieces of jewelry described in paragraph 2 of the complaint for the total amount of P224,000.00. After some haggling, the Bautistas were able to convince Mrs. Ribaya to sell to them the aforesaid pieces of jewelry for the price of P222,000.00. Mr. Bautista acknowledged the receipt of the jewelry as well as the agreed purchase price thereof by signing the receipt marked as Annex A and A-1 of the complaint. Mrs. Ribaya in turn was paid in the form of the two (2) Equitable Banking Corporation checks Nos. 10767485-A for P112, 000.00 (Annex B of the complaint) and No. 10755100-A for P110,000.00, both checks postdated June 23, 1968. Mrs. Ribaya then executed a voucher evidencing said payment (Annex C of the complaint). The next day, plaintiff, accompanied by Miss Narcisa Gosioco, went back to see defendant Marino Bautista for the purpose of requesting the latter to break up the Equitable Banking Corporation Check No. 10755100-A for P110,000.00 into separate checks inasmuch as part of the jewelry sold to Bautista the previous day belonged to Miss Gosioco. Bautista readily accommodated the request of Mrs. Ribaya by exchanging said check with four (4) Bank of America checks Nos. DD-8112 for P14,000.00; DD-8113 for P34,000.00, DD-8114 for P12,000.00, and DD-8115 for P50,000.00 totalling P110,000.00, all postdated June 23, 1968. On the four (4) checks Mrs. Ribaya delivered checks Nos. 8113 for P34,000.00 and 8114 for P12,000.00 to Miss Gosioco. Mrs. Ribaya kept for herself checks Nos. 8115 and 8112 for the sum of P64,000.00. The four (4) checks were acknowledged by Mrs. Ribaya in the debit-credit memo form of the Bautista Logging Company, Inc. (Annex F of the complaint).

"On the same day, April 24, 1968, Mrs. Ribaya again sold to the defendants four (4) pieces of jewelry worth P94,000.00. The pieces of jewelry sold are described in paragraph 3 of the complaint and the delivery of said pieces of jewelry was acknowledged by defendant Bautista under receipt marked Annex G of the complaint. While defendant Bautista issued Bank of America Checks Nos. DD-8106 for P12,000.00, DD-8111 for P12,000.00, DD-8110 for P35,000.00, and DD-8107 for P35,000.00, all postdated June 23, 1968, plaintiff Ribaya in turn was made to sign another voucher dated April 24, 1968 covering the said payment amounting to P94,000.00 (Annex F of the complaint). This transaction took place at the office of defendant Bautista at the Bank of Philippine Islands Building in Manila. During the transaction, Gloria Duque, secretary of Mr. Bautista, and Mr. Bautista himself were present aside from the plaintiff Mrs. Ribaya, Mrs. Bautista was not present on this occasion.

"As some of the owners of the jewelry sold to the defendants by Mrs. Ribaya on April 23, 1968 and April 24, 1968 wanted to get back their jewelry, Mrs. Ribaya on May 15, 1968 went back to the house of the Bautistas accompanied by Gloria Duque bringing with her three (3) pieces of jewelry more particularly described in Annex L of the complaint which she showed to Mr. Bautista for the purpose of giving said three (3) pieces of jewelry in exchange for some pieces previously sold to defendant Bautista. As Mrs. Bautista and her daughter, however, were not at home, she was requested by Mr. Bautista to leave said jewelry so that he can show them to his wife and daughter. Instead of returning the jewelry with which she offered to exchange for others previously sold, defendant Bautista sent Mrs. Ribaya two (2) days later another Bank of America check No. DD-8130 for P45,000.00 postdated July 17, 1968 issued by defendant Bautista. She was informed by Josefina Robles that the said check was in payment of the three (3) pieces of jewelry which plaintiff had left in the possession of the defendant Marino Bautista. She was further informed that the three (3) pieces of jewelry had been given away by Bautista as presents to some bank officials.

"When the maturity dates of the various postdated checks given to Mrs. Ribaya in payment of the different pieces of jewelry arrived, Mrs. Ribaya tried several times to contact defendant Marino Bautista pursuant to their agreement but all her efforts were in vain as she was informed that the Bautistas were in the mountains attending to their logging concession.

"Unable to contact the defendants, Mrs. Ribaya then deposited to her account at the Continental Bank the checks in her possession. All the checks paid by the defendant Bautista were dishonored by the bank for the reason that the accounts of the defendant were closed.

"As a former pawnshop operator, she knew that pawnshop owners were required to report their daily transactions with the Manila Police Department. Suspecting that the Bautistas might have pawned the pieces of jewelry purchased from her, she went to the pawnshop section of the Manila Police Department to verify her suspicion and to her chagrin she discovered that most of the jewelry she had sold to the defendants were pledged to various pawnshops in Manila.

"Armed with this discovery she was finally able to confront the defendant Marino Bautista with her findings. Defendant Bautista assured Mrs. Ribaya that he would pay her their obligation in connection with the jewelry transactions. After failing to keep these promises from week to week, Mrs. Ribaya demanded from the defendant Marino Bautista the surrender of the pawnshop tickets covering the pledge of the different pieces of jewelry he had obtained from her. Mrs. Ribaya was able to secure these tickets from the defendant Bautista one by one. The pawnshop tickets were issued in the names of the driver of the Bautista family, their secretary Gloria Duque, Mrs. Bautista, and a certain Balagot. With these pawnshop tickets in her possession, Mrs. Ribaya was able to redeem part of the jewelry she had delivered to the Bautistas after spending P52,900.00 for the redemption price of said jewelry plus interest in the amount of P760.79.

"There were, however, three (3) pawnshop tickets covering jewelry which did not belong to Mrs. Ribaya included among the tickets delivered to Mrs. Ribaya and (for) which defendant Bautista wanted to value at P11,000.00 (Exhibits P-4 and P-5). These were pawnshop tickets Nos. 95716, 95719 and 95851, all issued in

the name of his driver Narciso Amaya and pertaining to the Aguirre Pawnshop. Mrs. Ribaya assessed the jewelry covered by these three (3) tickets at P25,000.00 and after paying P17,000.00 for the redemption of said pieces of jewelry she credited the Bautistas with P8,000.00.

"x x x

"After computing the value of the pieces of jewelry recovered by Mrs. Ribaya and the disbursements made by her for the redemption of said jewelry and the unrecovered pieces, Mrs. Ribaya concluded that the balance of the account of the Bautistas for the purchase price of the various pieces of jewelry amounts to P125,460.79. She added that this amount does not include the amount of the checks delivered by her to Miss Gosio. She also testified that she has agreed to pay her lawyers an amount equivalent to 25% of the obligation unpaid by the Bautistas."

In the light of the above factual findings, the trial court rendered judgment sentencing respondents-defendants to pay petitioners- plaintiffs the sum of P125,460.79 with interest and 25% thereof for attorney's fees and expenses of litigation. On petitioners' claim for moral and exemplary damages, respondents had pleaded that respondent Marino Bautista had acted "in utmost good faith" and that damages in any concept could not be assessed against them, and the trial court upheld them, ruling that "the evidence adduced by the plaintiffs [was] insufficient to warrant its grant."

Herein petitioners interposed an appeal to the Court of Appeals insofar as the trial court failed to grant their claim for moral and exemplary damages, but respondent appellate court rejected their appeal and affirmed the appealed decision, finding that (1) as to moral damages, petitioner (therein appellant) Niceta Ribaya had not mentioned in her testimony in the trial court that she had suffered "mental anguish, serious anxiety, wounded feelings and moral shock"; and (2) as to exemplary damages, these damages cannot be recovered as a matter of right and it was not prepared to disturb the lower court's exercise of discretion in this regard.

Hence this petition for review, which we find to be meritorious.

Parenthetically, the petition has been submitted without a comment or answer from respondents-spouses despite the fact that on December 8, 1978, they were given through counsel ten (10) days from notice thereof to comment. On March 27, 1979, Zosimo T. Fama, a brother of Atty. Bienvenido T. Fama who was the counsel of record for herein respondents-spouses, explained in a letter that his said brother, the counsel, could not file the required comment since he had immigrated to the United States in 1972 and that he could not despite diligent efforts ascertain the whereabouts of his brother's clients and that their house had long been foreclosed by their creditors and the family had been long ejected therefrom. Per resolution of May 9, 1979, this Court, at petitioners' instance, ordered that copy of its resolution of December 8, 1978 requiring comment be sent directly to respondents at their last known address of record at 599 La Salle St., Greenhills subdivision, Mandaluyong, Metro Manila, but the papers were returned unserved. Petitioners were further required to ascertain the correct address of respondents to no avail. It is noted further that in the trial court, the case was submitted for decision on the basis of petitioners-plaintiffs' evidence, since respondents-defendants failed to appear on the date set for the continuation of the hearing and reception of their evidence. It thus clearly appears that respondents have either absconded or have entirely given up their defense. Their failure to answer or to comment or to be reached by court processes are declared a waiver on their part and cannot deter the Court from rendering judgment on the issue properly raised by petitioners, since they had been duly summoned at the commencement of the case and placed under the jurisdiction of our courts in this case.

Respondent court quoted in its appealed decision petitioner Niceta's testimony, as follows:

"Q -

Now, because of Mr. Bautista's default and your looking around in the pawnshops for those pieces of jewelries, what was the effect on you and your business?

"A -

I had to close my pawnshop and I had to sell some of my personal jewelries and to borrow money.

"Q -

Why do you have to do that?

"A -

Because I have also to pay the persons from whom I got the jewelries Mr. Bautista got from me.

"Q -

And you have all paid them now?

"A -

Yes, sir.

"Q -

And how about you, yourself, what happened?

"A -

We are in debt now, up to our head.

"Q -

And what is the effect of your indebtedness to yourself?

"A -

Extreme. For three months I could not sleep.

(t.s.n., pp. 26-28, hearing on Nov. 25, 1969)."

and then erroneously "noted that it was her indebtedness that caused her to have sleepless nights for three months. She did not mention in her testimony that she suffered mental anguish, serious anxiety or wounded feelings."

Respondent court, from its wrong premise, then as erroneously concluded that "(I)n order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like (San Miguel Brewery, Inc. vs. Magno, 21 SCRA 292). While in the complaint of plaintiffs-appellants there is an allegation of mental anguish, serious anxiety, wounded feelings and moral shock, there is no proof of the alleged mental anguish, serious anxiety, wounded feelings and moral shock. There must be clear testimony on the mental anguish, serious anxiety, wounded feelings and similar injuries. Plaintiff must testify to his said injury (Francisco vs. Government Service Insurance System, 7 SCRA 577). It would seem that 'physical suffering, mental anguish, fright, serious anxiety, wounded feelings, moral shock, and similar injury' must be testified to by the plaintiff, and not merely inferred from certain proven facts, like having sleepless nights. Having sleepless nights is not necessarily due to mental anguish, serious anxiety and the like."

In denying petitioners' claim for damages because of petitioner Niceta's failure to "mention in her testimony that she suffered mental anguish, serious anxiety or wounded feelings" respondent court misread the case of Francisco

vs. Government Service Insurance System cited by it. There, this Court had sustained the trial court's appealed decision denying the therein prevailing plaintiff's claim for moral and exemplary damages "not only on account of the plaintiff's failure to take the witness stand and testify to her social humiliation, wounded feelings, anxiety, etc., but primarily because a breach of contract like that of defendant, not being malicious or fraudulent, does not warrant the award of moral damages." [2]

Here, the facts and circumstances are totally different. In that case, therein plaintiff failed to take the witness stand and defendant's breach of contract was held to be not malicious and fraudulent. In the present case, petitioner Niceta took the witness stand and established by uncontradicted testimony that due to respondents' deceitful and malevolent acts of defraudation, she had suffered "extreme" anguish (without using the word anguish) and "could not sleep for three months," since she was forced to close her pawnshop, sell some of her personal jewelries and borrow money in order to pay off the owners of the jewelries wrongfully gotten by respondents from her. The evidence of record shows the magnitude of respondents' wanton fraudulent and malevolent acts of defraudation.

Thus, we find from the appealed decision that petitioner Niceta was misled into believing that respondent Marino Bautista was a millionaire when she saw their residence and was told that he was in the logging business and that he could easily pay for the jewelry because he had log shipments every two months; that all the checks issued by him in payment of the jewelries bounced with a note "Account Closed" or were dishonored; that some of the pieces of jewelry were pawned on the very same day that he got them from petitioners; that after discovering that the jewelries had been pawned with different pawnshops, petitioner Niceta "pleaded" with respondents to give her the pawnshop tickets so that she could redeem them and after weeks of anguished waiting and pleading, Bautista gave her the pawnshop tickets "one by one", which were issued in the names of the driver of the Bautista family, their secretary Gloria Duque, Mrs. Bautista and a certain Balagot; that petitioners, besides not having been paid, had to raise P82,800.00 plus interest in redeeming the jewelries covered by the pawnshop tickets, and were now in debt up to their heads; as a result of which petitioner Niceta suffered "extremely" and she "could not sleep for three months."

All this was preceded by a long period of serious anxiety: before respondent Bautista returned to her the pawnshop tickets one by one, petitioner Niceta had tried to see respondents in vain; they were always out and did not answer or return her calls; she was given the run-around; at the maturity dates of the various postdated checks given her in payment of the different pieces of jewelry, she tried several times to contact them pursuant to their agreement, but all her efforts ended in frustration, as she was informed that respondents were in the mountains attending to their logging concession.

We do not share respondent court's narrow view that petitioner Niceta's failure to use in her testimony the precise legal terms or "sacramental phrases" of "mental anguish, fright, serious anxiety, wounded feelings or moral shock" and the like justifies the denial of the claim for damages. It is sufficient that these exact terms have been pleaded in the complaint [3] and evidence has been adduced, as cited above, amply supporting the averments of the complaint. Indeed, petitioner Niceta vividly portrayed in simple terms the moral shock and suffering she underwent as a result of respondents' wanton abuse of her good faith and confidence.

Thus, petitioners' testimonial evidence to the effect that petitioner Niceta suffered "extremely" and that for three months she could not sleep was a clear demonstration of her physical suffering, mental anguish and serious anxiety and similar injury, resulting from respondents' malevolent acts that show her to be clearly entitled to moral damages. [4]

Petitioners having established the moral damages, are entitled in addition thereto, to exemplary damages. The wantonness and malevolence through which respondents defrauded petitioners, deceitfully incurring and then

evading settlement of their just liability certainly justifies the award of exemplary damages by way of example and correction for the public good and also to serve as a deterrent to the commission of similar misdeeds by others,[5] even if the transaction were viewed as a breach of civil contract.

In *Pan Pacific Company (Phil.) vs. Phil. Advertising Corporation*,^[6] this Court awarded moral and exemplary damages, in addition to other kinds of damages, to the plaintiff upon ample demonstration that the defendant therein, in utter disregard of the contractual rights of therein plaintiff, had refused deliberately and wantonly to pay the latter what was justly due under their contract for installation of bowling alleys and for taking advantage of the plaintiff's good faith, "notwithstanding that the defendant had promised to pay the balance of the price of the bowling alleys. Defendant, taking advantage of the plaintiff's good faith, requested a deferment of the payment until the installation shall have been completed; but the installation having been completed, defendants under one pretext or another, refused without just cause to pay what is due the plaintiff." Here, of course, there was more than wanton refusal to pay a plainly valid and just contractual debt, but a malicious defraudation and gross abuse of petitioners' good faith, whereby petitioners were wantonly "paid" with bouncing postdated checks and besides not being paid what was due them, had to undergo trauma and travail to redeem with their own and borrowed funds from the pawnshops some of the jewelries in order to return them to their owners.

ACCORDINGLY, the decision of respondent court insofar as it denies petitioners' claim for damages is hereby set aside. In addition to the amounts awarded in the affirmed judgment of the lower court, petitioners are further awarded moral and exemplary damages equivalent to twenty-five per cent (25%) of the principal sum of P125,460.79 adjudged in their favor by their court. With costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

[1] 3rd Division of the Court of Appeals, composed of Reyes, L. B., ponente, Climaco and Nocon, JJ. (Rollo, pp. 13-17).

[2] 7 SCRA, at page 586; emphasis supplied.

[3] Record on Appeal, p. 13.

[4] Article 2217 of the Civil Code reads: "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. x x x." (underscoring supplied).

[5] *Gutierrez vs. CA*, L-31611, Nov. 29, 1976; *Marchan vs. Mendoza*, L-24471, Jan. 31, 1969; *Cotabato Timberland Co. vs. Plaridel*, L-19432, February 26, 1965.

[6] G.R. No. L-22050, June 13, 1968, 23 SCRA 977, *Concepcion, C. J.*, ponente.

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