

MYLENE CRUZ-ROCES, ASSISTED BY HER HUSBAND VITTORIO ROCES, PLAINTIFF-APPELLEE, VS. QUICKMART, INC., REPRESENTED HEREIN BY VIRGILIO Q. YU, YU CHIN HAN, HENRY YAO YU, ROMEO C. AST...

Ponente: PERLAS-BERNABE, E., J.

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PERLAS-BERNABE, E., J.:

Before the Court is an appeal from the Decision[2] dated October 18, 2000 of Branch 8, Regional Trial Court of Legazpi City (RTC) in Civil Case No. 9318 for Damages which decreed:

“WHEREFORE, premises considered, decision is hereby rendered in favor of the plaintiffs and against the defendants Quickmart, Inc., John B. Barateta as owner of Champion Security Agency, Edwin Villanueva and Domingo Lumbes, ordering said defendants to pay the plaintiffs, jointly and severally, the sum of P3,000,000.00 for moral damages, P500,000.00 for exemplary damages, P500,000.00 for attorney’s fees and litigation expenses and the costs of the suit.

The defendant Quickmart, Inc.’s counterclaim and cross claim against Champion Security Agency, Danilo Moral, Edwin Villanueva and Domingo Lumbes are hereby ordered dismissed.

Defendant Quickmart, Inc. is ordered to pay Danilo Moral the sum of P50,000.00 for attorney’s fees and litigation expenses.

SO ORDERED.”[3]

As culled from the records, the following facts appear:

On January 15, 1997, a Complaint[4] for “Damages” was filed by plaintiff-appellee Mylene Roces (hereinafter Mylene) against Quickmart, Inc. (hereinafter Quickmart), Virgilio Q. Yu, Yu Chin Han, Romeo C. Astillero and Erwin Yao Yu before the RTC, docketed as Civil Case No. 9318. The Complaint was amended on February 4, 1997 to implead as additional defendants Champion Security Agency, Danilo Moral, Edwin Villanueva and Domingo Lumbes.[5] It was further amended on March 3, 1997 to implead John B. Barateta as defendant.[6] It was finally re-amended on December 23, 1999 to make it conform to the evidence presented during the trial of the case.[7]

Mylene claimed that at around 11:00 a.m. on January 9, 1997, she and her husband Vittorio Roces (hereinafter Vittorio) went to shop at Quickmart[8] located along Rizal Street in Daraga, Albay. After buying around P 2,000 worth of groceries[9] and paying the same, she went ahead of the bagger,[10] put the receipt in her bag[11] and slung the bag on her right shoulder.[12] She stopped two steps away from the main exit[13] facing the parking lot to look for her husband[14] and to wait for the bagger.[15] She looked to her right and signaled to the bagger, but a man[16] about four (4) meters[17] to her left called out aloud, “Miss.” She looked at the man[18] who said something in the Bicol language which she did not understand[19] and not knowing him, she turned away and looked again for the bagger. This time the man shouted, “Miss, may ninakaw ka sa bag.” Mylene just looked at

him and wondered whether he was referring to her. The man repeated the accusation then moved towards her. Mylene backed off,[20] got her bag and put it in front of her[21] holding both sides of the bag firmly against her chest[22] to protect herself as she felt the man was attacking her, but the latter approached her continuously. She looked at the security guard[23] posted at the gate of Quickmart pleadingly[24] but he just looked at her.[25] The man then held her by the shoulders[26] to keep her still[27] and grabbed her bag, but Mylene pulled it back. He then grabbed her bag violently, opened it and forcibly searched its contents[28] while continuously saying in a loud voice that she stole something[29] (i.e., a can of Century Tuna)[30] and put it in her bag.[31] The incident took place amidst a lot of people. Numerous shoppers stopped dead on their tracks to look at them.[32] The man, however, found nothing except money and some documents in Mylene's bag.[33] He then let go of her bag[34] and in a very low voice, almost a whisper, said, "Sorry, wala pala."

Vittorio, who happened to be about 10 steps or a car away, saw the man rush to Mylene and held her by the shoulders.[35] He ran towards her and asked why she was being held by the man.[36] Mylene said, "Pinagbibintangan niya ako." Vittorio shouted at the man, "How could you do that?, and pushed him.[37] A man from Quickmart snack house[38] who identified himself as a policeman, intervened and tried to pacify and stop Vittorio from pushing the man further, who turned out to be a house detective[39] under the employ of Champion Security Agency (hereinafter Champion) subcontracted by Quickmart[40] and who was later identified to be Edwin Villanueva[41] (hereinafter Edwin).[42] The policeman told Vittorio, "Tama na." To Edwin he said, "Dai nindo namidbidan sinda aki ni Mayor Rocés?"[43]

Both Mylene and Vittorio (hereinafter Sps. Rocés) were hysterical and shouted at the people of Quickmart. Mylene then asked the bagger to put the groceries in their van but Vittorio said, "Inakusahan ka na, you are still patronizing them?"[44] He then threw the boxes of the groceries back inside the store[45] and they asked for a refund.[46]

As a result of the incident, Mylene claimed that she experienced humiliation,[47] she could not sleep or eat, she kept crying, she shunned public function,[48] hence, the claim for actual/compensatory damages in the amount of P5,000,000.00, moral damages in the amount of P5,000,000.00, exemplary damages in the amount of P1,000,000.00, attorney's fees, litigation expenses and the costs of suit.[49]

Danilo Moral (hereinafter Danilo) filed his "Answer with Counterclaim"[50] denying that he is the owner-proprietor of Champion or that he has the capacity to represent, sue or be sued for and in its behalf, claiming that he was a mere employee therein.[51] In his testimony, he claimed to be a mere Finance Officer of Champion at its Extension Office in Daraga, Albay[52] and was the only officer present when a certain Roger of Quickmart called the office to inform Champion about the incident.[53] He further claimed that the responsible officers of Champion had exercised extraordinary care and diligence in the hiring and supervision of the guards involved, who merely followed the instructions and orders of Quickmart.[54] He interposed a counterclaim for moral damages in the amount of P10,000,000.00, exemplary damages in the amount of P1,000,000.00, actual and compensatory damages in the amount of P5,000,000.00, attorney's fees, litigation expenses and the costs of suit.[55]

Quickmart, Virgilio Q. Yu, Yu Chin Han, Romeo C. Astillero, and Erwin Yao Yu filed a joint "Answer with Counterclaim and Cross-claim."[56] Quickmart denied the existence of any employer-employee relationship with Edwin, who conducted the search on Mylene, and Domingo Lumbes (hereinafter Domingo), at whose behest Edwin searched Mylene,[57] both of whom were employees of Champion; while the other defendants claimed to be mere stockholders of Quickmart. They interposed a counterclaim for moral/compensatory and exemplary damages, attorney's fees, litigation expenses and costs of suit, and a cross-claim against Champion, Danilo, Edwin and Domingo for whatever amounts they will be adjudged to pay to Sps. Rocés.

On April 16, 1997, Mylene moved to set the case for pre-trial, to declare John B. Barateta in default and to be allowed to present evidence ex-parte as against the latter, which the court granted in its Order[58] dated April 28, 1997.

During the pre-trial conference, the parties agreed to limit the issues to the following: “(C)an defendants be held liable for damages for the search conducted on the plaintiffs (sic) by the security guards of defendant Champion Security Agency? On the cross claim is the cross-defendant liable to cross claimant?”[59] The pre-trial order was subsequently amended to include an additional issue, namely: “(W)hether a search described by the plaintiffs in their Complaint was conducted on plaintiff, Mylene Cruz-Roces, by the security guards of defendant Champion Security Agency, and if there was, who among the defendants should be made liable therefor.”[60]

On June 1, 2000, Sps. Roces moved to declare Edwin and Domingo in default which the RTC granted in its Order[61] dated June 6, 2000.

After due proceedings, the RTC rendered the assailed Decision on December 18, 2000. John Barateta (hereinafter John) and Quickmart interposed their respective appeals.[62]

John imputed the following assignment of errors, to wit:

“I

THE HONORABLE COURT A QUO HAS NEVER ACQUIRED JURISDICTION OVER DEFENDANTS JOHN BARATETA, EDWIN VILLANUEVA AND DOMINGO LUMBES.

II

THE HEREIN APPEALED DECISION OF THE COURT A QUO IS NULL AND VOID FOR DENIAL OF DUE PROCESS TO DEFENDANTS JOHN BARATETA, EDWIN VILLANUEVA AND DOMINGO LUMBES.

III

ASSUMING FOR THE SAKE OF ARGUMENT BUT WITHOUT ADMITTING THAT JURISDICTION HAS BEEN ACQUIRED BY THE COURT A QUO ON JOHN BARATETA, YET, UNLIQUIDATED DAMAGES COULD NOT BE IMPOSED AGAINST HIM BECAUSE HE WAS DECLARED IN DEFAULT.

IV

THE DECISION OF THE COURT A QUO WHICH AWARDED THE EXORBITANT AMOUNT OF THREE MILLION PESOS MORAL DAMAGES, FIVE MILLION[63] PESOS EXEMPLARY DAMAGES AND FIVE MILLION[64] PESOS ATTORNEY’S FEES TO PLAINTIFF AGAINST QUICKMART, INC. AND JOHN BARATETA IS AN UNDUE ENRICHMENT OF PLAINTIFF AND IS NOT SUPPORTED BY FACTS PROVEN DURING THE TRIAL, THE LAW AND JURISPRUDENCE ON THE MATTER.

V

ASSUMING FOR THE SAKE OF ARGUMENT BUT WITHOUT ADMITTING THAT THE COURT A QUO HAD ACQUIRED JURISDICTION OVER JOHN BARATETA, YET, HE COULD NOT BE HELD LIABLE FOR DAMAGES BECAUSE HE IS NOT THE EMPLOYER OF VILLANUEVA AND LUMBES AS COMPLETE SUPERVISION AND CONTROL OVER THE LATTER HOUSE DETECTIVES WAS EXERCISED BY DEFENDANT QUICKMART, INC.”[65]

On the other hand Quickmart argued that the RTC erred:

- In acting on the Complaint, Amended Complaint, and Re-Amended Complaint and rendering a Decision despite its failure to validly acquire jurisdiction over the persons of Domingo, Edwin and Champion and/or John;
- In ruling that Mylene has proven that she had a valid cause of action against it;
- In ruling that it should be held liable for the acts of Domingo, Edwin and Champion;
- In ruling that it is not entitled to its counterclaims and cross claims and, instead, be held liable for damages against Danilo.[66]

The case a quo was for Damages[67] under Articles 19,[68] 21[69] in relation to Articles 2176,[70] 2180 and 2219 of the Civil Code. In her “Appellees’ Brief,” Mylene contended that under Article 107 of the Labor Code, the security agency, namely Champion, is the direct employer of Edwin and Domingo, while the client where they were designated, namely Quickmart, is considered the indirect employer. Both appellants, however, claim that the other is the employer of the two House Detectives. Nevertheless, both appellants attack, inter alia, the substituted service of summons upon John, Edwin and Domingo as invalid, warranting the setting aside of the assailed Decision for lack of jurisdiction over their persons. There is merit in John’s appeal.

It bears to stress that the resolution of all the issues raised by John hinges upon a determination of whether or not jurisdiction was validly acquired over his person. In general, trial courts acquire jurisdiction over the person of the defendant by the service of summons. Where the action is in personam and the defendant is in the Philippines, as in this case, such service may be done by personal or substituted service, following the procedures laid out in Sections 6 and 7 of Rule 14 of the Rules of Court, which read:

“Section 6. Service in person on defendant. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

“Section 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant’s residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant’s office or regular place of business with some competent person in charge thereof.”

As can be gleaned from the above-quoted Sections, personal service of summons is preferred to substituted service. Only if the former cannot be made promptly can the process server resort to the latter.[71] Substituted service being in derogation of the usual method of service is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute.[72] The proof of service of summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business, of the defendant. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer’s return.[73] The resort to a substituted service must be duly justified[74] as the failure to comply faithfully, strictly and fully with all the foregoing requirements of substituted service renders the service of summons ineffective.[75]

Records reveal that Champion is a single proprietorship,[76] hence, personal service upon John, its owner, is necessary for the court to validly acquire jurisdiction over his person. The “Officer’s Return of Summons”[77] was silent as to the efforts actually exerted and the steps taken by the process server to locate and serve the summons personally on John. Irregularities in the service of summons may be cured only by proof that they were actually delivered to the defendant, which is equivalent to personal service.[78] In the absence of a categorical admission[79] by John that he indeed received such summons and a copy of the Re-Amended Complaint, it was

incumbent upon Mylene to prove that Danilo delivered to John both the summons and a copy of the complaint,[80] which Mylene failed to do. Therefore, jurisdiction had not been validly acquired by the RTC over John, rendering null and void all subsequent proceedings and issuances in the action from the order of default up to and including the judgment against him.[81] Accordingly, John is not bound by the assailed Decision. With this finding, the Court does not find it necessary to discuss the other issues raised by him.

The Court also finds merit on Quickmart's appeal.

As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it.[82] Thus, under paragraph 1 of the Contract, Champion assumed to provide Quickmart with 4 House Detectives during the life of the contract.[83] After Champion had sent its recommendees to Quickmart[84] they shall then undergo a personal interview by Reslie Mosuela, personnel-in-charge[85]/personnel manager[86] of Quickmart but only for the purpose of getting their personal file[87]/submitting their Bio-Data before starting their tour of duty.[88]

The duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards.[89] Moreover, paragraph 9 of the Contract expressly provided that Champion "shall assume full responsibility for the proper performance of duties of the House Detectives assigned by it and shall be solely responsible for any acts of said House Detectives during their watch hours, x x x." [90] While under paragraph 10 of the Contract, "the assigned House Detectives are at all times, during their tour of duties, subject to the supervision and control of the COMPANY in so far as this refers to and in relation to their duties and responsibilities," [91] such fact does not, by itself, render the client responsible and liable as an employer of the security guards concerned for the latter's wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency.[92] In fact, the same paragraph 10 was categorical in stating that Quickmart shall not thereby become the employer of the assigned House Detectives by such exercise.[93]

Besides, Article 107[94] of the Labor Code under which Mylene desires to hold Quickmart solidarily liable with Champion is inapplicable to the instant case. The said Article must be read together with Articles 106 and 109 of the Labor Code which limit the solidary liability of the independent contractor/direct employer and the indirect employer to cases where the former fails to pay the wages of his employees and for violations of the Labor Code particularly under Chapter III, Title II, Book III thereof on "Payment of Wages." There being no employer-employee relationship between Quickmart and the two House Detectives, Sps. Roces cannot impose vicarious liability upon Quickmart for their acts. In the case of Soliman, Jr. vs. Tuazon,[95] it was categorically ruled that "(l)iability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency."

Neither may Quickmart be adjudged liable under the "principle of abuse of rights" enshrined in Article 19 of the Civil Code, as well as under Article 21 of the same Code. However, while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.[96] A common thread woven in the three articles is that the act complained of must be intentional. The act must be tainted with bad faith.[97] It is well-settled that bad faith cannot be presumed and must be established by clear and convincing evidence, and the person who seeks damages due to the acts of another has the burden of proving that the latter acted in bad faith or ill-motive.[98] Whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or Article 21 of the Civil Code or other applicable provisions of law depends upon the circumstances of each case,[99] which does not obtain herein. Mylene failed to prove either

malice or bad faith on the part of Quickmart, or that the latter had the intent to injure her[100] or to willfully cause her damage.

Finally, the Court notes that in its Notice of Appeal, Quickmart categorically stated that the parties to the appeal are “defendant/cross-claimant Quickmart, Inc.; defendants/cross-defendants Champion Security Agency, represented by John Barateta, and Danilo Moral; as well as x x x Mylene Cruz Roces.”[101] Inasmuch as the complaint against it is hereby being dismissed, so must its cross-claim against its co-defendants. As cross-claimant, Quickmart cannot claim more rights than the plaintiff herself, on whose cause of action its cross-claim depended. The cross-claim is no longer viable in view of the dismissal of the complaint against it.[102]

However, since Quickmart did not appeal the assailed Decision insofar as it was made liable to Danilo Moral’s cross-claim against it, such pronouncement became final and executory[103] 15 days after its receipt of the assailed Decision on October 20, 2000,[104] and thus, should be upheld.

WHEREFORE, the assailed Decision dated October 18, 2000 of Branch 8, RTC of Legazpi City in Civil Case No. 9318 is hereby MODIFIED dismissing the Complaint against John B. Barateta and Quickmart, Inc., but not the cross-claim by Danilo Moral against the latter which was not appealed. The rest of the Decision is AFFIRMED.

SO ORDERED.

Reyes, JR., and Abdulwahid, JJ., concur.

[1] Part of the initial caseload assigned to the Ponente pursuant to Office Order No. 16-04-EV dated October 26, 2004.

[2] Records, pp. 303-312.

[3] Id. at 312.

[4] Id. at 1-4.

[5] Id. at 15-19.

[6] Id. at 41-45.

[7] Id. at 235-238.

[8] Transcript of Stenographic Notes (TSN), July 21, 1997, p. 15.

[9] TSN, October 17, 1997, p. 24.

[10] TSN, July 21, 1997, p. 16.

[11] TSN, August 4, 1997, p. 19.

[12] Id. at 29.

[13] TSN, July 21, 1997, p. 16.

[14] Id. at 17.

[15] Id. at 16.

[16] Id. at 17.

- [17] Id. at 18.
- [18] Id. at 17.
- [19] TSN, August 4, 1997, p. 18.
- [20] TSN, July 21, 1997, p. 17.
- [21] TSN, July 21, 1997, p. 18.
- [22] TSN, August 4, 1997, p. 30.
- [23] TSN, July 21, 1997, p. 18.
- [24] TSN, August 4, 1997, p. 35.
- [25] TSN, July 21, 1997, p. 18.
- [26] TSN, August 4, 1997, p. 22
- [27] Id. at 21.
- [28] TSN, July 21, 1997, p. 19.
- [29] Id. at 20.
- [30] TSN, December 14, 1999, p. 11.
- [31] TSN, July 21, 1997, p. 20.
- [32] Id. at 19.
- [33] Id. at 20.
- [34] TSN, August 4, 1997, p. 34.
- [35] TSN, October 17, 1997, p. 21.
- [36] Id. at 22.
- [37] TSN, July 21, 1997, p. 20.
- [38] That is, Quick “n” Hearty: TSN, October 17, 1997, p. 23.
- [39] TSN, July 22, 1997, p. 13; TSN, October 17, 1997, p. 41.
- [40] TSN, August 4, 1997, p. 41.
- [41] TSN, July 22, 1997, p. 9.
- [42] TSN, February 9, 1998, p. 5.
- [43] TSN, October 17, 1997, p. 30.
- [44] TSN, July 21, 1997, p. 22.
- [45] TSN, October 17, 1997, p. 24.
- [46] TSN, July 21, 1997, p. 22; TSN, October 17, 1997, p. 24.
- [47] TSN, October 17, 1997, p. 6.

- [48] TSN, July 21, 1997, p. 26.
- [49] Third Amended Complaint: Records, p. 237.
- [50] Id. at 26-29.
- [51] Id. at 26.
- [52] TSN, September 9, 1999, p. 3.
- [53] Id. at 8-9.
- [54] Answer with Counterclaim: Records, p. 27.
- [55] Id. at 27-28.
- [56] Id. at 30-36.
- [57] “Exhibits “D” and “D-1:” Id. at 123.
- [58] Id. at 69.
- [59] Order dated June 4, 1997: Id. at 94.
- [60] Order dated June 30, 1997: Id. at 97.
- [61] Id. at 279.
- [62] Id. at 313-314 & 316-317.
- [63] Should be FIVE HUNDRED THOUSAND.
- [64] Should be FIVE HUNDRED THOUSAND.
- [65] Rollo, pp. 23-24.
- [66] Id. at 52-53.
- [67] Memorandum for the Plaintiff: Records, p. 294.
- [68] Art. 19. Every person must, in the exercise of his rights and the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
- [69] Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.
- [70] Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.
- [71] Jose vs. Boyon, 414 SCRA 216.
- [72] Hamilton vs. Levy, 344 SCRA 821.
- [73] Miranda vs. Court of Appeals, 326 SCRA 278.
- [74] Madrigal vs. Court of Appeals, 319 SCRA 331.
- [75] Miranda vs. Court of Appeals, supra.

[76] TSN, December 14, 1999, p. 6.

[77] Records, p. 48.

[78] Mapa vs. Court of Appeals, 214 SCRA 417, citing Moran, M.V., Comments on the Rules of Court, vol. 1, 1979 ed., 444.

[79] Similar to that made in Boticano vs. Chu, 148 SCRA 541.

[80] Mapa vs. Court of Appeals, supra.

[81] Syjuco vs. Castro, 175 SCRA 171.

[82] Soliman, Jr. vs. Tuazon, supra.

[83] Records, p. 198.

[84] TSN, March 27, 1998, p. 20.

[85] Id. at 5.

[86] Id. at 18.

[87] Id. at 20.

[88] Id. at 22.

[89] Soliman, Jr. vs. Tuazon, supra.

[90] Records, p. 199.

[91] Ibid.

[92] Soliman, Jr. vs. Tuazon, supra.

[93] Records, p. 199.

[94] ART. 107. INDIRECT EMPLOYER. – The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

[95] 209 SCRA 47.

[96] GF Equity, Inc. vs. Valenzona, 462 SCRA 466, citing Globe Mackay Cable and Radio Corporation vs. Court of Appeals, 176 SCRA 778.

[97] China Banking Corporation vs. Court of Appeals, 231 SCRA 472.

[98] Mortel vs. KASSCO, Inc., 348 SCRA 391.

99 Eduardo P. Manuel vs. People of the Philippines, G.R. No. 165842, 29 November 2005, citing Globe Mackay Cable and Radio Corporation vs. Court of Appeals, supra.

[100] Nikko Hotel Manila Garden vs. Reyes, a.k.a. "amay bisaya,"

[101] Records, p. 313.

[102] Ruiz, Jr. vs. Court of Appeals, 212 SCRA 660.

[103] Umali vs. Coquia, 161 SCRA 159.

[104] Notice of Appeal: Records, p. 313.

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