

## **TOMAS BAGALAY, PLAINTIFF AND APPELLANT, VS. GENARO URSAL, DEFENDANT AND APPELLEE.**

*G.R. No. L-6445. July 29, 1954*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

An action was brought to recover moral damages in the sum of P10,000 and P2,500 for attorney's fees and costs. For cause of action the plaintiff alleges that the defendant, in his capacity as City Assessor of Cebu, wrote and mailed to him a letter by which he was informed that he was delinquent in the payment of realty tax from 1947 to 1951 on a parcel of land assessed at P1,800, amounting to P98.45 including penalties, and that unless the same be paid on 9 May 1952 the real property would be advertised for sale to satisfy the tax and penalty due and expenses of the auction sale; that the letter caused him mental anguish, fright, serious anxiety, moral shock and social humiliation; besmirched his reputation; wounded his feelings, all of which the plaintiff fairly estimates to be P10,000. A motion to dismiss the complaint on the ground that it does not state a cause of action was granted. A motion for reconsideration of the order of dismissal was denied. Hence this appeal.

Laying aside the other unimportant point as to whether the letter was addressed to Tomas Bacalay and not to the plaintiff surnamed Bagalay and granting that it was addressed and mailed to the latter, still the facts pleaded in the complaint, admitting them to be true, do not entitle him to recover the amount of moral damages he claims to have suffered as a result of the writing and mailing of the letter by the defendant in his official capacity and receipt thereof by the plaintiff because the former has done nothing more than to write and mail the letter. There is no allegation in the complaint that the amount due for the realty tax and penalty referred to in the defendant's letter complained of had been paid by the plaintiff. Article 27 of the Civil Code which authorizes the filing of an action for damages, relied upon by the plaintiff, contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty which causes material suffering or moral loss. The provisions of the article invoked by the plaintiff do not lend support to his claim and contention, because the defendant did not refuse nor did he neglect to perform his official duty but on the contrary he performed it. All the moral damages the plaintiff claims he has suffered are but the product of oversensitiveness.

The order appealed from is affirmed, with costs against the plaintiff.

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

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