

**PHILIPPINE RABBIT BUS LINES, INC. AND FELIX PANGALANGAN,
PLAINTIFFS-APPELLANTS, VS. PHIL-AMERICAN FORWARDERS, INC.,
ARCHIMEDES J. BALINGIT AND FERNANDO PINEDA,
DEFENDANTS-APPELL...**

G.R. No. L-25142. March 25, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Philippine Rabbit Bus Lines, Inc. and Felix Pangalangan appealed on pure questions of law from the order of the Court of First Instance of Tarlac, dismissing their complaint against Archimedes J. Balingit.

The dismissal was based on the ground that Balingit as the manager of Phil-American Forwarders, Inc., which together with Fernando Pineda and Balingit, was sued for damages in an action based on quasi-delict or culpa aquiliana, is not the manager of an establishment contemplated in article 2180 of the Civil Code (Civil Case No. 3865).

In the complaint for damages filed by the bus company and Pangalangan against Phil-American Forwarders, Inc., Balingit and Pineda, it was alleged that on November 24, 1962, Pineda drove recklessly a freight truck, owned by Phil-American Forwarders, Inc., along the national highway at Sto. Tomas, Pampanga. The truck bumped the bus driven by Pangalangan, which was owned by Philippine Rabbit Bus Lines, Inc. As a result of the bumping, Pangalangan suffered injuries and the bus was damaged and could not be used for seventy-nine days, thus depriving the company of earnings amounting to P8,665.51. Balingit was the manager of Phil-American Forwarders, Inc.

Among the defenses interposed by the defendants in their answer was that Balingit was not Pineda's employer.

Balingit moved that the complaint against him be dismissed on the ground that the bus company and the bus driver had no cause of action against him. As already stated, the lower court dismissed the action as to Balingit. The bus company and its driver appealed.

The Civil Code provides:

"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.

"ART. 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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"The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their

functions.

"Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

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"The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)"

The novel and unprecedented legal issue in this appeal is whether the terms "employers" and "owners and managers of an establishment or enterprise" (dueños o directores de un establecimiento o empresa) used in article 2180 of the Civil Code, formerly article 1903 of the old Code, embrace the manager of a corporation owning a truck, the reckless operation of which allegedly resulted in the vehicular accident from which the damage arose.

We are of the opinion that those terms do not include the manager of a corporation. It may be gathered from the context of article 2180 that the term "manager" ("director" in the Spanish version) is used in the sense of "employer".

Hence, under the allegations of the complaint, no tortious or quasi-delictual liability can be fastened on Balingit as manager of Phil-American Forwarders, Inc., in connection with the vehicular accident already mentioned because he himself may be regarded as an employee or dependiente of his employer, Phil-American Forwarders, Inc.

Thus, it was held "que es dependiente, a los efectos de la responsabilidad subsidiaria establecida en el num. 3.o del (art.) 1903, el director de un periodico explotado por una sociedad, porque cualquiera que sea su jerarquia, y aunque lleve la direccion de determinadas convicciones politicas, no por eso deja de estar subordinado a la superior autoridad de la Empresa" (Decision of Spanish Supreme Court dated December 6, 1912 cited in 12 Manresa,Codigo Civil Español, 5th Ed. 662; 1913 Enciclopedia Juridica Española 992).

The bus company and its driver, in their appellants' brief, injected a new factual issue which was not alleged in their complaint. They argue that Phil-American Forwarders, Inc. is merely a business conduit of Balingit because out of its capital stock with a par value of P41,200, Balingit and his wife had subscribed P40,000 and they paid P10,000 on their subscription, while the other incorporators, namely, Rodolfo Limjuco, Ponciano Caparas and Rafael Suntay paid P250.25 and P25, respectively.

That argument implies that the veil of corporate fiction should be pierced and that Phil-American Forwarders, Inc. and Balingit and his wife should be treated as one and the same civil personality.

We cannot countenance that argument in this appeal. It was not raised in the lower court. The case has to be decided on the basis of the pleadings filed in the trial court where it was assumed that Phil-American Forwarders, Inc. has a personality separate and distinct from that of the Balingit spouses.

The legal issue, which the plaintiffs-appellants can ventilate in this appeal, is one which was raised in the lower court and which is within the issues framed by the parties (Sec. 18, Rule 46, Rules of Court).

When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change his theory on appeal because, to permit him to do so, would be unfair to the adverse party (2 Moran's Comments on the Rules of Court, 1970 Ed. p. 505).

WHEREFORE, the lower court's order of dismissal is affirmed. Costs against the plaintiffs-appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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