

**PEDRO MIRASOL, PETITIONER, VS. HON. RAFAEL DE LA CRUZ
(JUDGE OF THE COURT OF FIRST INSTANCE, CAMARINES SUR) AND
DOMINADOR MENDOZA, RESPONDENTS.**

G.R. No. L-32552. July 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review filed by petitioner Pedro Mirasol seeking to modify that part of the judgment rendered by the respondent court in Civil Case No. 6564 entitled "Pedro Mirasol, Plaintiff, vs. Dominador Mendoza, Defendant" awarding to the defendant attorney's fees in the amount of P500.00.

The facts are as follows:

In a complaint dated September 26, 1967 filed before the Municipal Court of Magarao, Camarines Sur, petitioner Pedro Mirasol instituted an action for Forcible Entry against private respondent Dominador Mendoza. In his Answer to the complaint, private respondent interposed a Counterclaim alleging (1) the prior existence of a tenancy contract between him and petitioner, and (2) that the complaint was filed purely for harassment, and prayed that the complaint be dismissed, and that on the Counterclaim, judgment be rendered as follows: "(1) That plaintiff be ordered to pay moral damages in the amount of P500.00; (2) To declare the existence of lease-hold relations; and for such other relief and remedy as this court may deem just and equitable in the premises."

By Order dated February 28, 1968, the trial court dismissed the complaint with costs against the plaintiff; likewise, it dismissed the Counterclaim for insufficient proof. On appeal to the Court of First Instance of Camarines Sur by the petitioner, the respondent judge, on the ground that the issue involved is purely an agrarian matter, rendered judgment dismissing the appeal, the dispositive portion of which states:

"WHEREFORE, premises considered, this Court, for want of jurisdiction, hereby dismisses the case with costs against the plaintiff. Attorney's fees at this instance shall not be less than P500.00 in favor of the defendant."

Petitioner's motion for reconsideration having been denied, he now seeks the relief aforestated earlier in this Decision on the ground that the award of attorney's fees in favor of respondent Mendoza has no basis in fact and in law. Petitioner contends, to wit:

"(a) No stipulation whatsoever has been entered by the parties for the payment of said attorney's fees and there was no showing that even without such stipulation the obligation to pay the same is one of the exceptions enumerated by Art. 2208 of the Civil Code.

(b) Granting that the respondent Dominador Mendoza was in anyway entitled to the aforementioned attorney's

fees of P500.00, the same cannot be recovered, they not having been claimed nor proved at the hearing, the respondent having chosen not to present any evidence.

(c) That the said attorney's fees of P500.00 are unreasonable taking into consideration that respondent Mendoza has been represented in the Municipal Court by an attorney of the Office of the Agrarian Counsel and his private attorney in the CFI submitted the case for decision without presenting any evidence."

On the other hand, private respondent insists that the award of attorney's fees is in order, pointing out that (1) attorney's fees may be given as moral damages, which in this particular case was specifically claimed in his Counterclaim; (2) the complaint is clearly unfounded and was filed purely for the purpose of harassment; and (3) his Answer below incorporated a general prayer for relief.

The rule on awards of attorney's fees is found in Art. 2208 of the New Civil Code which provides:

"Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered;

In all cases, the attorney's fees and expenses of litigation must be reasonable."

From the very opening sentence of Art. 2208, it is clearly intended to retain the award of attorney's fees as the exception in our law, as the general rule remains that attorney's fees are not recoverable in the absence of a stipulation thereto, the reason being that it is not sound policy to set a premium on the right to litigate. In the case at bar, the Court is faced with the question of whether or not the award of attorney's fees made by the respondent judge in favor of respondent Mendoza falls under the exceptions enumerated in Art. 2208, considering the established fact of the absence of any stipulation regarding attorney's fees.

We are not persuaded by the private respondent's contentions. Even if it were conceded that under the New Civil Code, attorney's fees became a part of recoverable damages,[1] private respondent fails to note that attorney's fees are recoverable only in the concept of actual damages[2] and not as moral damages as he contends. We are also mindful of the allegation of private respondent that the complaint filed by petitioner (plaintiff below) was clearly unfounded and was filed purely for the purpose of harassment. But the records of the case at bar do not disclose any proof presented by private respondent to substantiate such allegation; neither did the respondent judge make any findings to that effect in his appealed decision. True, Art. 2208 (4) allows attorney's fees in cases of clearly unfounded civil actions, but it must be understood to mean those where the cause or causes of action are so untenable as to amount to gross and evident bad faith.[3] Clearly then, proof must be presented to the court as to the facts and circumstances constituting the alleged bad faith. Otherwise, the award of attorney's fees is not justified where there is no proof, other than the bare statement of harassment that a party to be so adjudged had acted in bad faith.[4]

Again, private respondent insists that he had incorporate in his Answer a prayer for "such other relief and remedy as this court may deem just and equitable." This is an erroneous conclusion. This Court had categorically ruled that "even in such cases the conclusion must be borne by findings of facts and law. What is just and equitable in a given case is not a mere matter of feeling but of demonstration. This is specially true since the last part of Art. 2208 expressly adds that the "attorney's fees and expenses of litigation must be reasonable. x x x" Hence, the exercise of judicial discretion in the award of attorney's fees under Art. 2208 (11) of the New Civil Code demands a factual, legal or equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture."[5]

In view of the declared policy of law that awards of attorney's fees remain the exception rather than the general rule, it must be stressed once again that it is necessary for the court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be touched once and only in the dispositive portion of the decision. The text itself must expressly state the reason why attorney's fees are being awarded.[6] The Court, after reading through the text of the appealed decision, finds the same bereft of any findings of fact and law to justify the award of attorney's fees. The matter of such fees was touched but once and appears only in the dispositive portion of the decision. Simply put, the text of the decision did not state the reason why attorney's fees are being awarded, and for this reason, the Court finds it necessary to disallow the same for being conjectural.

WHEREFORE, judgment is hereby rendered modifying the appealed decision by deleting therefrom the award of attorney's fees.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] *Castueras v. Bayona*, 106 Phil. 340 (1959).

[2] *Fores v. Miranda*, 105 Phil. 266 (1959).

[3] *Rizal Surety & Insurance Co. vs. CA*, 20 SCRA 61.

[4] *Pacific Merchandising Corp. v. Diestro Logging Development Corp.*, 34 SCRA 704.

[5] *Buan v. Camaganacan*, 16 SCRA 321.

[6] *Ibid.*

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