

T. D. JESSWANI PLAINTIFF-APPELLEE, VS. MASSARAM DIALDAS AND MACHIMI HASSARAM DEFENDANTS-APPELANTS.

G.R. No. L-4651. May 12, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

In the Court of First Instance of Cebu, T. D. Jesswani sued the above defendants in 1946 to wrest from them the use of the business name "Cebu Department Store." Defendants traversed plaintiff's allegations, alleged a better right to display the name and interposed a counterclaim for damages in the amount of P2,000 "on account of the malicious acts and bad motives of the plaintiff."

Upon such pleadings a hearing was regularly had; and the court dismissed the complaint, mainly because defendants had registered said business appellation with the Bureau of Commerce in Manila. On the claim for damages, Judge Ignacio Debuque absolved the plaintiff, saying:

"The defendants claim that they have suffered damages in the sum of P2,000.00 by virtue of the filing of the present complaint. There is no convincing evidence on record to prove these alleged damages. The only evidence presented by the defendants which may, in a way, be considered as damages is the fact that the defendants paid the 1943 and 1949 premiums for the bond filed by them in order to dissolve the attachment levied on their property upon petition of the plaintiff. But inasmuch as the defendants have not filed an application for such damages with due notice to the plaintiff, pursuant to Sec. 20, Rule 59 of the Rules of Court, said claim for damages cannot be considered. In fact no evidence on this point has been adduced."

The defendants presently seek a review of the decision in so far as it refused to give them pecuniary compensation.

It is fundamental in this jurisdiction that damages must be proved[1]. They can not be presumed, the Civil Code having made no provision for nominal damages[2]. The trial court declared that the only damage suffered by defendants was the premium paid for the bond they submitted to dissolve the attachment levied upon their property at the instigation of the plaintiff.

The defendants in their printed brief here did not specify the page of the records disclosing their evidence of other damages. They argue however they are entitled to recover by reason of the illegal attachment "taxable cost, counsel fees, and loss of daily earnings." (p.9 brief)

The award of costs ordinarily depends on the discretion of the court. Counsel fees, other than those fixed in the rules as costs, are not an element of recoverable damages[3]. As to "loss of daily earnings" or profits, there is no proof[4]. Anyway His Honor was right in holding that thru defendants failure to comply with sec. 20 of Rule 59, application with notice - they may not recover damages arising from the attachment[5].

By the way, the New Civil Code is not applicable, the issue having arisen before its enactment.

Judgment affirmed, with costs in this instance against appellants.

Paras, Feria, Pablo, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] Rubiso v. Rivera 41 Phil. 39; Sanz v. Lavin 6 Phil. 299.

[2] Algarra v. Sandejas 27 Phil. 284.

[3] Tan Ti v. Alvear 26 Phil. 566; Sec. 6, Rule 131.

[4] See Choa Tek Hee v. Phil. Pub. Co. 34 Phil; 447; Song Fo v. Hawaiian Phil. Co. 47 Phil. 821.

[5] Tan Suyco v. Javier 21 Phil. 82; Nueva Eapana v. Montelibano 58 Phil. 807.

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