

## **PEDRO J. VELASCO, PLAINTIFF-APPELLANT, VS. MANILA ELECTRIC CO., ET AL., DEFENDANTS-APPELLEES.**

*G.R. No. L-18390. December 20, 1971*

Ponente: REYES, J.B.L., J.

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### **REYES, J.B.L., J.:**

Both appellant Velasco and appellee Manila Electric Co. have filed their respective motions to reconsider the decision of this Court dated 6 August 1971. For the sake of clarity, the two motions will be here dealt with separately.

### **A - APPELLANT'S MOTION FOR RECONSIDERATION**

The thrust of this motion is that the decision has incorrectly assessed appellant's damages and unreasonably reduced their amount. It is first argued that the decision erred in not taking into account, in computing appellant's loss of income, the appellant's undeclared income of P8,338.20, assessed by the Bureau of Internal Revenue for the year 1954, in addition to his declared income for that year (P10,975), it being argued that appellant never claimed any other source of income besides his professional earnings. Several circumstances of record disprove this claim. (1) That the amount of P8,338.20 was kept apart from the ordinary earnings of appellant for the year 1954 (P10,975), and not declared with it, is in itself circumstantial evidence that it was not of comparable character. (2) If it was part of his ordinary professional income, appellant was guilty of fraud in not declaring it and he should not be allowed to derive advantage from his own wrongdoing. (3) The decision pointed out that by including the undeclared amount in appellant's disclosed professional earnings for 1954, to a grand total of P19,313.20, the income for said year becomes abnormally high (in fact, more than double), as compared to appellant's earnings for the three preceding years, 1951-1953, that averaged not more than P7,000 per annum. Such abnormality justifies the Court's refusal to consider the undisclosed P8,338.20 as part of appellant's regular income for the purpose of computing the reduction in his earnings as a result of the complained acts of appellee. (4) Finally, the true source of the un-declared amount lay in appellant's own knowledge, but he chose not to disclose it; neither did he call upon the assessing revenue officer to reveal its character.

Appellant Velasco urges that the damages awarded him are inadequate considering the present high cost of living, and calls attention to Article 1250 of the present Civil Code, and to the doctrines laid down in *People vs. Pantoja*, G.R. No. L-18793, 11 October 1968, 25 SCRA 468. We do not deem the rules invoked to be applicable. Article 1250 of the Civil Code is to the effect that:

"ART. 1250. In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary."

It can be seen from the employment of the words "extraordinary inflation or deflation of the currency stipulated" that the legal rule envisages contractual obligations where a specific currency is selected by the parties as the medium of payment; hence it is inapplicable to obligations arising from tort and not from contract, as in the case

at bar, besides there being no showing that the factual assumption of the article has come into existence. As to the Pantoja ruling, the regard paid to the decreasing purchase of the peso was considered a factor in estimating the indemnity due for loss of life, which in itself is not susceptible of accurate estimation. It should not be forgotten that the damages awarded to herein appellant were by no means full compensatory damages, since the decision makes clear that appellant, by his failure to minimize his damages by means easily within his reach, was declared entitled only to a reduced award for the nuisance sued upon (*Steel vs. Rail & River Coal Co.*, 42 Ohio App. 228, 182 N. E. 552); and the amount granted him had already taken into account the changed economic circumstances.

Nor is the fact that appellant lost a chance to sell his house for P95,000 to Jose Valencia constitute a ground for an award of damages in that amount. As remarked in the main decision, there is no adequate proof of loss, since there is no evidence of the depreciation in the market value of the house in question caused by the acts of defendant Meralco. The house, after all, has remained with appellant, and he admits in his motion for reconsideration (page 48) that properties have increased in value by 2006 since then.

For the foregoing reasons, the motion for reconsideration is denied.

### **B – APPELLEE’S MOTION TO RECONSIDER**

Appellee Manila Electric Company argues that in case the noise emitted by its substation can not be brought down to the 50 decibel level imposed by our decision in chief, the remedy of the appellant would be to compel the appellee Company to acquire and pay for the value of the house, under the so-called doctrine of "inverse condemnation", and cites in support our doctrines in *Bengzon vs. Province of Pangasinan*, 62 Phil. 816, and *Republic vs. Philippine Long Distance Telephone Co.*, L-18841, 27 January 1969, 26 SCRA 620-634. But as pointed out by appellant in his opposition, this issue was not raised, nor was the inverse condemnation doctrine invoked in the trial court, so that it would be improper to consider it on appeal, and worse still, on a motion for reconsideration of the decision on the merits. Furthermore, there is no showing that it is impossible to reduce the substation noise to the level decreed by this Court in the main decision. On the contrary, appellee's own evidence is that the noise can be reduced by erecting a wall barrier on the line separating the substation lot and the property of appellant.

The version that appellee did not erect the wall because of the objections of appellant's wife was denied by her, and there is no preponderance of evidence in favor of appellee on this point. Moreover, since it was appellant Dr. Velasco who complained, his wife's objection would not suffice to constitute a waiver of his claim.

As to the petition to increase the sound level prescribed by this Court from 50 to 55 decibels, on the ground that present "ambient sound already ranges from 44 to 55 decibels in the mornings", the same can not be granted. As shown by the evidence at the trial, the intensity of the noise emitted by appellee's transformers are most objectionable at night, when people are endeavoring to rest and sleep in compensation for the fatigue and tensions accumulated during daytime.

WHEREFORE, appellee's motion to reconsider is likewise denied.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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