

**SPOUSES SOFRONIO AND AIDA NISPEROS, PLAINTIFFS-APPELLEES,
VS. METRO VIGAN WATER DISTRICT, MARCELINO ARCE AND JOSE
PONCIANO, DEFENDANTS. METRO VIGAN WATER DISTRICT AND
MARCELINO ...**

Ponente: CRUZ, J.

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CRUZ, J.:

Before the Regional Trial Court of Ilocos Sur (Vigan, Branch 71) was an action for damages filed by spouses Sofronio and Aida Nisperos (or “appellees”, when collectively) against Metro Vigan Water District (or “MVWD”) and its “plumbers”, Marcelino Arce (or “Arce”) and Jose Ponciano (or “Ponciano”).

MVWD is a public utility corporation supplying water in some areas of Vigan, Ilocos Sur. Appellees were among its customers.

On August 25, 1994, at around 11:00 a.m., Arce and Ponciano went to Aida’s office to collect water bill in the amount of P679.95. As no receipt could be issued by the two, Aida declined to pay. Upon arrival at home at 11:30 a.m., however, Aida learned that their (appellees’) water service was disconnected.

Instituted on September 30, 1994, the abovementioned action was predicated on the averments that the disconnection was made without prior notice from MVWD; that when confronted at MVWD’s office, Arce “arrogantly humiliated and threatened” Aida by “swinging his arm with a posture to strike” her; and that in the presence of Aida, Arce ordered MVWD personnel not to reconnect appellees’ water service no matter what happens.

On their part, MVWD, Arce and Ponciano averred that pursuant to the Utility Rules and Regulations Governing the Operations of MVWD, service may be disconnected without further notice if no payment is made prior to the date the account becomes delinquent; that on August 13, 1994, MVWD’s meter reader, Eleuterio Afroilan (or “Afroilan”), presented a statement of account and notice of disconnection; that the statement of account was the billing for July 1994, the due date of which was August 16, 1994; that appellees’ account became delinquent on August 21, 1994 but the disconnection was effected only on August 25, 1994 pursuant to the order issued on that date by Evangeline Gascon (or “Gascon”), MVWD’s commercial chief; that collection prior to disconnection was attempted in good faith to give appellees the opportunity to settle their account; that Arce and Ponciano were authorized to collect payment; that had Aida made payment, Arce and Ponciano could have transmitted the same to MVWD’s office and return with the corresponding receipt; that in MVWD’s office, Aida and her daughter, Sheila Tomalioan, uttered defamatory words against Arce and Ponciano; and that appellees did not fully comply with the requirement of non-forum shopping. They interposed a counterclaim for moral and exemplary damages and attorney’s fees.

Pending trial, Ponciano died. Consequently, in an order dated May 9, 1995, the complaint was dismissed as against him.

On October 31, 1996, the trial court rendered a decision, the dispositive portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiffs and against the defendants Metro Vigan Water District and Marcelino Arce. This Court orders them to pay the plaintiffs:

- The amount of one hundred thousand pesos (P100,000.00) as actual and moral damages;
- The amount of fifty thousand pesos (P50,000.00) as exemplary damages;
- The amount of twenty thousand pesos (P20,000.00) as attorney’s fees.

The defendants are further ordered to pay the costs of this suit.

SO ORDERED.”

Appealing the decision, MVWD and Arce (or “appellants”, when collectively) fault the trial court –

- “IN RULING THAT (APPELLANTS) DISCONNECTED THE WATER CONNECTION OF (APPELLEES) – A WATER CONCESSIONAIRE WHO DEFAULTED IN THE PAYMENT OF WATER BILLS FOR FOUR CONSECUTIVE MONTHS – WITHOUT VALID PRIOR NOTICE. THIS FINDING IS NOT SUPPORTED, AND IS (SIC) FACT CONTRADICTED, BY DIRECT AND POSITIVE EVIDENCE ON RECORD”;
- “IN AWARDING (APPELLEES) AN UNSPECIFIED AMOUNT (WHICH WAS LUMPED TO THE AWARD OF ALLEGED MORAL DAMAGES) FOR AND AS ACTUAL DAMAGES DESPITE TOTAL ABSENCE OF ANY EVIDENCE THEREFOR”;
- “IN AWARDING (APPELLEES) MORAL AND EXEMPLARY DAMAGES, INCLUDING ATTORNEY’S FEES, NOTWITHSTANDING ABSENCE OF REQUISITE FACTORS JUSTIFYING SUCH AWARD”; and
- “IN FAILING TO AWARD TO (APPELLANTS) EXEMPLARY DAMAGES AND ATTORNEY’S FEES ARISING FROM (APPELLEES’) ACT OF UNNECESSARILY DRAGGING THE FORMER INTO THIS LITIGATION THEREBY CAUSING THEM HARM AND INJURY.”

The appeal is partially meritorious.

Sec. 97 of Revised Order No. 1 of the Public Service Commission states:

“SEC. 97. Payment of bills.- A public service may require that bills for service be paid within a specified time after rendition. When the billing period covers a month or more, the minimum time allowed will be ten days and upon expiration of the specified time, service may be discontinued for the nonpayment of bills, provided that a 48 hours’ written notice of such disconnection has been given the customer: Provided, however, That disconnections of service shall not be made on Sundays and official holidays and never after 2 p.m., of any working day: Provided, further, That if at the moment the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the operator who is to effect the disconnection, the said agent or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.”

Sec. 97, *id.* gives emphasis on three requirements: (i) ten-day period for payment where the billing covers at least one month; (ii) 48-hour written notice of disconnection; and (iii) acceptance of customer's payment and issuance of a temporary receipt to avoid an impending disconnection.

In finding absence of a valid notice of disconnection, the lower court held that service of the demand letter dated August 10, 1994 (Exh. “3”) on Sofronio's father, Sofronio, Sr., was not sufficiently proven because the

inscriptions therein, i.e., date and time received, were not made by Sofronio, Sr. but by Gascon; and that assuming that the demand letter was given to Sofronio, Sr., the latter has a legal personality different from his son.

Basic is the rule that factual findings of trial courts are accorded high respect and are generally not disturbed on appeal unless found to be clearly arbitrary or unfounded (*People vs. Sumalpong*, 284 SCRA 464). Appellants' case does not fall under the exception.

Appellants contend that they had sufficiently established, thru the testimony of Afroilan, that the demand letter was validly served on appellees; that notices of public utilities are ordinarily served by leaving a copy at the customer's residence without requiring acknowledgment thereof; and that appellees did not present Sofronio, Sr. to deny that service of said letter was effected on him.

Afroilan's testimony shows that service of the demand letter was made on Sofronio, Sr. (t.s.n., May 10, 1995, p. 19). Even if such testimony is given credence, however, there was still no valid service of said letter. At that time, Sofronio, Sr. was not residing at appellees' house and this fact was known to Afroilan (t.s.n., May 11, 1995, p. 4). Applying by analogy the rule on service of summons, substituted service of the demand letter at appellees' residence could not have been validly made except "with some person of suitable age and discretion then residing therein" (Sec. 7, Rule 14, 1997 Rules of Civil Procedure).

More importantly, the demand letter cannot be considered a notice of disconnection. It is a demand on appellees to settle their account with MVWD "within 5 days from receipt" thereof, otherwise, it would "be constrained to disconnect" their water service. It was merely a warning on appellees that failure to settle their account within five days (which should have been ten days pursuant to Sec. 97 of Revised Order No. 1) from service thereof would result in disconnection; it did not speak of MVWD's decision to finally disconnect the water service.

Besides, the notice was supposedly served on August 13, 1994. Consequently, appellees' account became delinquent on either August 19, 1994 (upon expiration of the five-day period stated in the demand letter) or August 24, 1994 (upon lapse of the ten-day period prescribed in Sec. 97 of Revised Order No. 1). However, no 48-hour written notice of disconnection was given to appellees after their account became delinquent, whether on August 19th or 24th.

Appellants cannot blame appellees for non-remittance of their payment to either Arce or Ponciano despite threat of disconnection. As aptly stated by the lower court:

"x x x defendant MVWD had the clear duty and obligation to issue a receipt, official or 'temporary', to Aida Nisperos before it could even resort to disconnecting the latter's water line. But Arce is not even the official or regular bill collector, the regular collector being Eleuterio Afroilan. Moreover, Arce did not carry with him an authority to collect in the absence of Afroilan. Assuming, however, that he did carry an authority to collect from his employer (sic) MVWD, then Arce should have issued a receipt, official or temporary, to Aida Nisperos who was demanding for one. But this too Arce failed. And yet Aida Nisperos was willing to pay provided Arce could issue her a receipt."

Be that as it may, disconnection of appellees' water service without the 48-hour written notice of disconnection does not ipso facto entitle them to damages.

The power of courts to grant damages demands factual, legal and equitable justification. Its basis cannot be left to speculation (*Safic Aican & Cie vs. Imperial Vegetable Oil Co., Inc.*, 355 SCRA 559).

Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable (*Quisumbing vs. Manila Electric Company*, 380 SCRA 195). An award of actual damages cannot be

sustained solely on the basis of allegations without any tangible document to support such claim (*People vs. Otayde*, 416 SCRA 597).

Appellees have not substantiated their assertion that they suffered actual damages due to the disconnection of their water service. Consequently, the award of actual damages has no factual and legal basis.

Even as appellees failed to prove entitlement to actual damages, appellants may be assessed for nominal damages in order that the former's right, which had been violated by the latter, may be vindicated or recognized (*Malaga vs. Penachos, Jr.*, 213 SCRA 516). Under the situation, an award of the sum of P20,000.00 by way of nominal damages is reasonable and fair (*Philippine Telegraph & Telephone Corp. vs. Court of Appeals*, 388 SCRA 270).

On the other hand, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presume good faith; it is not enough that one suffered sleepless nights, mental anguish or serious anxiety as a result of the actuations of the other party (*Vda. de Urbano vs. Government Service Insurance System*, 307 SCRA 672; *Ace Haulers Corporation vs. Court of Appeals*, 338 SCRA 572). Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach or known duty through some motive or interest or will that partakes of the nature of fraud (*Francisco vs. Ferrer, Jr.*, 353 SCRA 261). However, the appealed decision contains no finding of bad faith on the part of appellants.

Parenthetically, an award of exemplary damages requires, among others, that the act complained of must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner (*Francisco vs. Ferrer, Jr.*, *supra*). Similarly, the trial court, aside from making no finding of bad faith, did not rule that the disconnection of appellees' water service was done in any of such manner.

Although appellees were forced to litigate to protect their rights, such fact by itself will not justify an award of attorney's fees under Art. 2209 of the Civil Code as no showing of bad faith could be reflected in appellants' insistence in the case other than an erroneous conviction of the righteousness of their cause (*National Steel Corporation vs. Court of Appeals*, 283 SCRA 45).

Moreover, the reason for the award of attorney's fees must be stated in the text of the court's decision and not in the dispositive portion only (*Brent Hospital, Inc. vs. National Labor Relations Commission*, 292 SCRA 304). However, the appealed decision does not state the reason for the award of attorney's fees.

Finally, applying the same standard earlier discussed, appellants' counterclaim for moral and exemplary damages is utterly wanting in factual and legal basis.

WHEREFORE, the appealed decision of the Regional Trial Court of Ilocos Sur (Vigan, Branch 71) is AFFIRMED with MODIFICATIONS in that the award of actual, moral and exemplary damages and attorney's fees is DELETED but defendants-appellants are ordered to pay to plaintiffs-appellees, jointly and severally, the amount of P20,000.00 as nominal damages.

SO ORDERED.

Reyes, Jr., J. and Lanzas, JJ., concur.

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