

**SOLOMON BOYSAW AND ALFREDO M. YULO, JR.,
PLAINTIFFS-APPELLANTS, VS. INTERPHIL PROMOTIONS, INC., LOPE
SARREAL, SR., AND MANUEL NIETO, JR., DEFENDANTS-APPELLEES.**

G.R. No. L-22590. March 20, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is an appeal interposed by Solomon Boysaw and Alfredo Yulo, Jr., from the decision dated July 25, 1963 and other rulings and orders of the then Court of First Instance [CFI] of Rizal, Quezon City, Branch V in Civil Case No. Q-5063, entitled "Solomon Boysaw and Alfredo M. Yulo, Jr., Plaintiffs versus Interphil Promotions, Inc., Lope Sarreal, Sr. and Manuel Nieto, Jr., Defendants", which, among others, ordered them to jointly and severally pay defendant-appellee Manuel Nieto, Jr., the total sum of P25,000.00, broken down into P20,000.00 as moral damages and P5,000.00 as attorney's fees; the defendants-appellees Interphil Promotions, Inc. and Lope Sarreal, Sr., P250,000.00 as unrealized profits, P33,369.72 as actual damages and P5,000.00 as attorney's fees; and defendant-appellee Lope Sarreal, Sr., the additional amount of P20,000.00 as moral damages aside from costs.

The antecedent facts of the case are as follows:

On May 1, 1961, Solomon Boysaw and his then Manager, Willie Ketchum, signed with Interphil Promotions, Inc. represented by Lope Sarreal, Sr., a contract to engage Gabriel "Flash" Elorde in a boxing contest for the junior lightweight championship of the world.

It was stipulated that the bout would be held at the Rizal Memorial Stadium in Manila on September 30, 1961 or not later than thirty [30] days thereafter should a postponement be mutually agreed upon, and that Boysaw would not, prior to the date of the boxing contest, engage in any other such contest without the written consent of Interphil Promotions, Inc.

On May 3, 1961, a supplemental agreement on certain details not covered by the principal contract was entered into by Ketchum and Interphil. Thereafter, Interphil signed Gabriel "Flash" Elorde to a similar agreement, that is, to engage Boysaw in a title fight at the Rizal Memorial Stadium on September 30, 1961.

On June 19, 1961, Boysaw fought and defeated Louis Avila in a ten-round non-title bout held in Las Vegas, Nevada, U.S.A. [pp. 26-27, t.s.n., session of March 14, 1963].

On July 2, 1961, Ketchum, on his own behalf and on behalf of his associate Frank Ruskay, assigned to J. Amado Araneta the managerial rights over Solomon Boysaw.

Presumably in preparation for his engagement with Interphil, Solomon Boysaw arrived in the Philippines on July 31, 1961.

On September 1, 1961, J. Amado Araneta assigned to Alfredo J. Yulo, Jr. the managerial rights over Boysaw that he earlier acquired from Ketchum and Ruskay. The next day, September 2, 1961, Boysaw wrote Lope Sarreal, Sr.

informing him of his arrival and presence in the Philippines.

On September 5, 1961, Alfredo Yulo, Jr. wrote to Sarreal, informing him of his acquisition of the managerial rights over Boysaw and indicating his and Boysaw's readiness to comply with the boxing contract of May 1, 1961. On the same date, on behalf of Interphil, Sarreal wrote a letter to the Games and Amusement Board [GAB] expressing concern over reports that there had been a switch of managers in the case of Boysaw, of which he had not been formally notified, and requesting that Boysaw be called to an inquiry to clarify the situation.

The GAB called a series of conferences of the parties concerned culminating in the issuance of its decision to schedule the Elorde-Boysaw fight for November 4, 1961. The USA National Boxing Association which has supervisory control of all world title fights approved the date set by the GAB.

Yulo, Jr. refused to accept the change in the fight date, maintaining his refusal even after Sarreal on September 26, 1961, offered to advance the fight date to October 28, 1961 which was within the 30-day period of allowable postponements provided in the principal boxing contract of May 1, 1961.

Early in October 1961, Yulo, Jr. exchanged communications with one Mamerto Besa, a local boxing promoter, for a possible promotion of the projected Elorde-Boysaw title bout. In one of such communications dated October 6, 1961, Yulo informed Besa that he was willing to approve the fight date of November 4, 1961 provided the same was promoted by Besa.

While an Elorde-Boysaw fight was eventually staged, the fight contemplated in the May 1, 1961 boxing contract never materialized.

As a result of the foregoing occurrences, on October 12, 1961, Boysaw and Yulo, Jr. sued Interphil, Sarreal, Sr. and Manuel Nieto, Jr. in the CFI of Rizal [Quezon City Branch] for damages allegedly occasioned by the refusal of Interphil and Sarreal, aided and abetted by Nieto, Jr., then GAB Chairman, to honor their commitments under the boxing contract of May 1, 1961.

On the first scheduled date of trial, plaintiff moved to disqualify Solicitor Jorge Coquia of the Solicitor General's Office and Atty. Romeo Edu of the GAB Legal Department from appearing for defendant Nieto, Jr. on the ground that the latter had been sued in his personal capacity and, therefore, was not entitled to be represented by government counsel. The motion was denied insofar as Solicitor Coquia was concerned, but was granted as regards the disqualification of Atty. Edu.

The case dragged into 1963 when sometime in the early part of said year, plaintiff Boysaw left the country without informing the court and, as alleged, his counsel. He was still abroad when, on May 13, 1963, he was scheduled to take the witness stand. Thus, the lower court reset the trial for June 20, 1963. Since Boysaw was still abroad on the later date, another postponement was granted by the lower court for July 23, 1963 upon assurance of Boysaw's counsel that should Boysaw fail to appear on said date, plaintiff's case would be deemed submitted on the evidence thus far presented.

On or about July 16, 1963, plaintiffs represented by a new counsel, filed an urgent motion for postponement of the July 23, 1963 trial, pleading anew Boysaw's inability to return to the country on time. The motion was denied; so was the motion for reconsideration filed by plaintiffs on July 22, 1963.

The trial proceeded as scheduled on July 23, 1963 with plaintiff's case being deemed submitted after the plaintiffs declined to submit documentary evidence when they had no other witnesses to present. When defendant's counsel was about to present their case, plaintiffs' counsel after asking the court's permission, took no further part in the proceedings.

After the lower court rendered its judgment dismissing the plaintiffs' complaint, the plaintiffs moved for a new trial. The motion was denied, hence, this appeal taken directly to this Court by reason of the amount involved.

From the errors assigned by the plaintiffs, as having been committed by the lower court, the following principal issues can be deduced:

- Whether or not there was a violation of the fight contract of May 1, 1961; and if there was, who was guilty of such violation.
- Whether or not there was legal ground for the postponement of the fight date from September 1, 1961, as stipulated in the May 1, 1961 boxing contract, to November 4, 1961.
- Whether or not the lower court erred in refusing a postponement of the July 23, 1963 trial.
- Whether or not the lower court erred in denying the appellant's motion for a new trial.
- Whether or not the lower court, on the basis of the evidence adduced, erred in awarding the appellees damages of the character and amount stated in the decision.

On the issue pertaining to the violation of the May 1, 1961 fight contract, the evidence established that the contract was violated by appellant Boysaw himself when, without the approval or consent of Interphil, he fought Louis Avila on June 19, 1961 in Las Vegas, Nevada. Appellant Yulo admitted this fact during the trial. [pp. 26-27, t.s.n., March 14, 1963].

While the contract imposed no penalty for such violation, this does not grant any of the parties the unbridled liberty to breach it with impunity. Our law on contracts recognizes the principle that actionable injury inheres in every contractual breach. Thus:

"Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the terms thereof, are liable for damages." [Art. 1170, Civil Code].

Also:

"The power to rescind obligations is implied, in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him." [Par. 1, Art. 1191, Civil Code].

There is no doubt that the contract in question gave rise to reciprocal obligations. "Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other" [Tolentino, Civil Code of the Philippines, Vol. IV, p. 175.]

The power to rescind is given to the injured party. "Where the plaintiff is the party who did not perform the undertaking which he was bound by the terms of the agreement to perform, he is not entitled to insist upon the performance of the contract by the defendant, or recover damages by reason of his own breach." [Seva vs. Alfredo Berwin, 48 Phil. 581, underscoring supplied].

Another violation of the contract in question was the assignment and transfer, first to J. Amado Araneta, and subsequently, to appellant Yulo, Jr., of the managerial rights over Boysaw without the knowledge or consent of Interphil.

The assignments, from Ketchum to Araneta, and from Araneta to Yulo, were in fact novations of the original contract which, to be valid, should have been consented to by Interphil.

Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor." [Art. 1293, Civil Code, underscoring supplied].

That appellant Yulo, Jr., through a letter, advised Interphil on September 5, 1961 of his acquisition of the managerial rights over Boysaw cannot change the fact that such acquisition, and the prior acquisition of such rights by Araneta were done without the consent of Interphil. There is no showing that Interphil, upon receipt of Yulo's letter, acceded to the "substitution" by Yulo of the original principal obligor, who is Ketchum. The logical presumption can only be that, with Interphil's letter to the GAB expressing concern over reported managerial changes and requesting for clarification on the matter, the appellees were not reliably informed of the changes of managers. Not being reliably informed, appellees cannot be deemed to have consented to such changes.

Under the law when a contract is unlawfully novated by an applicable and unilateral substitution of the obligor by another, the aggrieved creditor is not bound to deal with the substitute.

"The consent of the creditor to the change of debtors, whether in expromision or delegacion is an indispensable requirement . . . Substitution of one debtor for another may delay or prevent the fulfillment of the obligation by reason of the inability or insolvency of the new debtor, hence, the creditor should agree to accept the substitution in order that it may be binding on him.

Thus, in a contract where x is the creditor and y is the debtor, if y enters into a contract with z, under which he transfers to z all his rights under the first contract, together with the obligations thereunder, but such transfer is not consented to or approved by x, there is no novation. X can still bring his action against y for performance of their contract or damages in case of breach." [Tolentino, Civil Code of the Philippines, Vol. IV, p. 361].

From the evidence, it is clear that the appellees, instead of availing themselves of the options given to them by law of rescission or refusal to recognize the substitute obligor Yulo, really wanted to postpone the fight date owing to an injury that Elorde sustained in a recent bout. That the appellees had the justification to renegotiate the original contract, particularly the fight date is undeniable from the facts aforesaid. Under the circumstances, the appellees' desire to postpone the fight date could neither be unlawful nor unreasonable.

We uphold the appellees' contention that since all the rights on the matter rested with the appellees, and appellants' claims, if any, to the enforcement of the contract hung entirely upon the former's pleasure and sufferance, the GAB did not act arbitrarily in acceding to the appellee's request to reset the fight date to November 4, 1961. It must be noted that appellant Yulo had earlier agreed to abide by the GAB ruling.

In a show of accommodation, the appellees offered to advance the November 4, 1961 fight to October 28, 1961 just to place it within the 30-day limit of allowable postponements stipulated in the original boxing contract.

The refusal of appellants to accept a postponement without any other reason but the implementation of the terms of the original boxing contract entirely overlooks the fact that by virtue of the violations they have committed of the terms thereof, they have forfeited any right to its enforcement.

On the validity of the fight postponement, the violations of the terms of the original contract by appellants vested the appellees with the right to rescind and repudiate such contract altogether. That they sought to seek an adjustment of one particular covenant of the contract, is under the circumstances, within the appellee's rights.

While the appellants concede to the GAB's authority to regulate boxing contests, including the setting of dates therefor, [pp. 44-49, t.s.n., Jan. 17, 1963], it is their contention that only Manuel Nieto, Jr. made the decision for postponement, thereby arrogating to himself the prerogatives of the whole GAB Board.

The records do not support appellants' contention. Appellant Yulo himself admitted that it was the GAB Board

that set the questioned fight date. [pp. 32-42, t.s.n., Jan. 17, 1963]. Also, it must be stated that one of the strongest presumptions of law is that official duty has been regularly performed. In this case, the absence of evidence to the contrary, warrants the full application of said presumption that the decision to set the Elorde-Boysaw fight on November 4, 1961 was a GAB Board decision and not of Manuel Nieto, Jr. alone.

Anent the lower court's refusal to postpone the July 23, 1963 trial, suffice it to say that the same issue had been raised before Us by appellants in a petition for certiorari and prohibition docketed as G.R. No. L-21506. The dismissal by the Court of said petition had laid this issue to rest, and appellants cannot now hope to resurrect the said issue in this appeal.

On the denial of appellant's motion for a new trial, we find that the lower court did not commit any reversible error.

The alleged newly discovered evidence, upon which the motion for new trial was made to rest, consists merely of clearances which Boysaw secured from the clerk of court prior to his departure for abroad. Such evidence cannot alter the result of the case even if admitted for they can only prove that Boysaw did not leave the country without notice to the court or his counsel.

The argument of appellants is that if the clearances were admitted to support the motion for a new trial, the lower court would have allowed the postponement of the trial, it being convinced that Boysaw did not leave without notice to the court or to his counsel. Boysaw's testimony upon his return would, then, have altered the results of the case.

We find the argument without merit because it confuses the evidence of the clearances and the testimony of Boysaw. We uphold the lower court's ruling that:

"The said documents [clearances] are not evidence to offset the evidence adduced during the hearing of the defendants. In fact, the clearances are not even material to the issues raised. It is the opinion of the Court that the 'newly discovered evidence' contemplated in Rule 37 of the Rules of Court, is such kind of evidence which has reference to the merits of the case, of such a nature and kind, that if it were presented, it would alter the result of the judgment. As admitted by the counsel in their pleadings, such clearances might have impelled the Court to grant the postponement prayed for by them had they been presented on time. The question of the denial of the postponement sought for by counsel for plaintiffs is a moot issue ... The denial of the petition for certiorari and prohibition filed by them, had the effect of sustaining such ruling of the court... [pp. 296-297, Record on Appeal].

The testimony of Boysaw cannot be considered newly-discovered evidence for as appellees rightly contend, such evidence has been in existence waiting only to be elicited from him by questioning.

We cite with approval appellee's contention that "the two qualities that ought to concur or dwell on each and every piece of evidence that is invoked as a ground for new trial in order to warrant the reopening ... inhered separately on two unrelated species of proof" which "creates a legal monstrosity that deserves no recognition."

On the issue pertaining to the award of excessive damages, it must be noted that because the appellants wilfully refused to participate in the final hearing and refused to present documentary evidence after they no longer had witnesses to present, they, by their own acts prevented themselves from objecting to or presenting proof contrary to those adduced for the appellees.

On the actual damages awarded to appellees, the appellants contend that a conclusion or finding based upon the uncorroborated testimony of a lone witness cannot be sufficient. We hold that in civil cases, there is no rule requiring more than one witness or declaring that the testimony of a single witness will not suffice to establish

facts, especially where such testimony has not been contradicted or rebutted. Thus, we find no reason to disturb the award of P250,000.00 as and for unrealized profits to the appellees.

On the award of actual damages to Interphil and Sarreal, the records bear sufficient evidence presented by appellees of actual damages which were neither objected to nor rebutted by appellants, again because they adamantly refused to participate in the court proceedings.

The award of attorney's fees in the amount of P5,000.00 in favor of defendant-appellee Manuel Nieto, Jr. and another P5,000.00 in favor of defendants-appellees Interphil Promotions, Inc. and Lope Sarreal, Sr., jointly, cannot also be regarded as excessive considering the extent and nature of defense counsels' services which involved legal work for sixteen [16] months.

However, in the matter of moral damages, we are inclined to uphold the appellant's contention that the award is not sanctioned by law and well-settled authorities. Art. 2219 of the Civil Code provides:

"Art. 2219. Moral damages may be recovered in the following analogous cases:

- 1) A criminal offense resulting in physical injuries;
- 2) Quasi-delict causing physical injuries;
- 3) Seduction, abduction, rape or other lascivious acts;
- 4) Adultery or concubinage;
- 5) Illegal or arbitrary detention or arrest;
- 6) Illegal search;
- 7) Libel, slander or any other form of defamation;
- 8) Malicious prosecution;
- 9) Acts mentioned in Art. 309.
- 10) Acts and actions referred to in Arts., 21, 26, 27, 28, 29, 30, 32, 34 and 35.

The award of moral damages in the instant case is not based on any of the cases enumerated in Art. 2219 of the Civil Code. The action herein brought by plaintiffs-appellants is based on a perceived breach committed by the defendants-appellees of the contract of May 1, 1961, and cannot, as such, be arbitrarily considered as a case of malicious prosecution.

Moral damages cannot be imposed on a party litigant although such litigant exercises it erroneously because if the action has been erroneously filed, such litigant may be penalized for costs.

"The grant of moral damages is not subject to the whims and caprices of judges or courts. The court's discretion in granting or refusing it is governed by reason and justice. In order that a person may be made liable to the payment of moral damages, the law requires that his act be wrongful. The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such right is so precious that moral damages may not be charged on those who may exercise it erroneously. For these the law taxes costs. [Barreto vs. Arevalo, et. al. No. L-7748, Aug. 27, 1956, 52 O.G., No. 13, p. 5818.]

WHEREFORE, except for the award of moral damages which is herein deleted, the decision of the lower court is hereby affirmed.

SO ORDERED.

Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

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