

PHOENIX PUBLISHING HOUSE, INC., PETITIONER, VS. JOSE T. RAMOS AND SOCORRO C. RAMOS, DOING BUSINESS AS NATIONAL BOOK STORE, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-32339. March 29, 1988

Ponente: PARAS, J.

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PARAS, J.:

This petition originated in an action for damages arising from an alleged infringement of petitioner's copyright for two books entitled "General Science Today for Philippine Schools, First Year" and "General Science Today for Philippine Schools, Second Year," both authored by Gilman, Van Houten and Cornista and first published in 1961. Named plaintiffs as "copyright proprietors of said books" were Phoenix Publishing House, Inc., Purita Dancel-Cornista, Phil N. Gilman and L. F. Van Houten. The complaint charged that defendants, now herein private respondents "reprinted, published, distributed and sold said books in gross violation of the Copyright Law and of plaintiffs' rights to their damage and prejudice" and prayed for actual, moral and exemplary damages as well as for attorney's fees and expenses of litigation.

After trial, judgment was rendered, the dispositive portion of which is as follows -

"WHEREFORE, judgment is hereby rendered, dismissing plaintiff's action. Instead, judgment is (sic) hereby rendered in favor of the defendants and against the plaintiff (sic), and orders the latter to pay the defendants by way of damages as and for attorney's fees the amount of P5,000.00. The writ of preliminary injunction in hereby dissolved, and the copies of General Science Today mentioned in Exhibits M and M-1 are hereby ordered returned to the defendants against proper receipt." (p. 54, Rollo)

From the aforesaid judgment, petitioner Phoenix Publishing House, Inc. appealed to the Court of Appeals (under CA-G.R. No. 39498-R) on the grounds that the lower court erred -

"1. In not holding that appellees had lost their right to interpose the defense of illegality or irregularity of appellant's copyright;

"2. In holding that appellant's copyright is not entitled to protection for allegedly not having been validly obtained;

"3. In holding that the evidence presented was insufficient to establish that the books seized from appellees were spurious;

"4. In holding that appellees were not liable for damages because they had no knowledge that the books they sold were pirated or spurious; and

"5. In dismissing the complaint and sentencing appellant to pay attorney's fees." (p. 54, Rollo)

In a Decision of the Court of Appeals promulgated on June 8, 1970 (penned by Justice Hermogenes Concepcion, Jr. and concurred in by Justices Eulogio S. Serrano and Lourdes P. San Diego), the lower court's judgment was affirmed.

Against this Decision, petitioner filed the instant petition for review assigning several errors to have been allegedly committed by respondent court.

In a Resolution dated August 25, 1970 the petition was given due course "but only insofar as the award of attorney's fees is concerned."

On this issue, petitioner contends that respondent court erred in assigning attorney's fees against petitioner for no other apparent reason than for losing its case, contrary to the fundamental rules settled by jurisprudence that a penalty should not be set on the right to litigate (*Tan Ti v. Alvear*, 26 Phil 566) nor should counsel's fees be awarded everytime a party wins a lawsuit (*Jimenez v. Bucoy*, 103 Phil 40) unless it appears, which does not in petitioner's case, that the suit instituted by the losing party was clearly unfounded (*Peralta et al. v. Alipio*, 97 Phil 719) and, at all events, the court must state the reason for the award of attorney's fees (*Buan v. Camaganacan*, 16 SCRA 321) which reason the decision in question does not indicate (pp. 11-12, Rollo).

The law limits the instances in which attorney's fees may be recovered. Thus, the Civil Code provides:

"ART. 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 interest;

"(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 plainly valid, just 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) 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."

Obviously, this case cannot fall under pars. 1, 2, 3, 5, 6, 7, 8, 9 & 10 of the aforequoted article. If at all, the award is under either pars. 4 or 11 thereof.

The evidence on record however, shows that petitioner secured the corresponding copyrights (Exhs. U and V) for its books. These copyrights were found to be all right by the Copyright Office and petitioner was always conceded to be the real owner thereof. It was on the strength of these facts that petitioner filed the complaint against respondents. Through a proper search warrant (Exh. "M") obtained after petitioner was convinced that respondents were selling spurious copies of its copyrighted books, the books were seized from respondents and were identified to be spurious. In the face of these facts, it cannot be said that the case is clearly an unfounded civil action or proceeding (par. 4, Art. 2208).

The lower court justified its award as follows:

"It is obvious, however, that the defendants had to get the services of counsel to vindicate themselves before the Court and those watching for the ultimate decision in the instant case. Considering the professional standing of defendant's counsel, and the nature and volume of the work performed by said counsel and discernible from the records of the instant case, and considering, further, that plaintiff itself assesses the services of its own counsel in the instant case at P10,000.00 (par. 10, Complaint), this Court finds that counsel fee for defendants' attorneys in the amount of P5,000.00 would not be unconscionable." (p. 95, Record on Appeal)

We do not find this as enough justification for such an award under par. 11 of Article 2208.

In a long line of decisions, We have consistently ruled that it is not sound policy to place a penalty on the right to litigate.

WHEREFORE, the decision of respondent Court of Appeals is MODIFIED by deleting therefrom the award of attorney's fees against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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