

MANILA GAS CORPORATION, PETITIONER-APPELLANT, VS. COURT OF APPEALS AND ISIDRO M. ONGSIP, RESPONDENTS-APPELLEES.*G.R. No. L-44190. October 30, 1980*

Ponente: MAKASIAR, J.

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This petition for certiorari treated as a special civil action seeks to review the decision of the Court of Appeals in CA-G.R. No. 50956-R dated July 6, 1976 affirming the decision of the Court of First Instance of Rizal, Pasay City Branch VII in Civil Case No. 3019-P dated May 2, 1972.

Manila Gas Corporation, the petitioner herein, is a public utility company duly authorized to conduct and operate the gainful business of servicing and supplying gas in the City of Manila and its suburbs for public necessity and convenience while private respondent, Isidro M. Ongsip, is a businessman holding responsible positions in a number of business firms and associations in the Philippines.

On May 20, 1964, respondent Ongsip applied for gas service connection with petitioner Manila Gas Corporation. A 1 x 4 burner gas was installed by petitioner's employees in respondent's kitchen at his residence at 2685 Park Avenue, Pasay City.

On July 27, 1965, respondent Ongsip requested petitioner to install additional appliances as well as additional gas service connections in his 46-door Reyno Apartment located also in the same compound. In compliance with said request, petitioner installed two 20-gallon capacity water storage heaters and two heavy-duty gas burners and replaced the original gas meter with a bigger 50-light capacity gas meter. The installations and connections were all done solely by petitioner's employees. There was no significant change in the meter reading despite additional installations.

In May and June of 1966 no gas consumption was registered in the meter, prompting petitioner to issue a 'meter order' with instructions to change the gas meter in respondent's residence.

On August 17, 1966, at around 1 o'clock in the afternoon, petitioner's employee led by Mariano Coronel, the then Chief of the Distribution Department, went to Ongsip's place. After identifying themselves to the houseboy therein that they are from the Manila Gas Corporation, but without notifying or informing respondent Ongsip, they changed the gas meter and installed new tube connections. At the time the work was being undertaken, private respondent was taking a nap but he was informed afterwards of what had taken place by his houseboy.

On that same afternoon, at about 5 o'clock, petitioner's employees returned with a photographer who took pictures of the premises. Respondent Ongsip inquired from Coronel why they were taking pictures but the latter simply gave him a calling card with instructions to go to his (Coronel's) office. There, he was informed about the existence of a by-pass valve or "jumper" in the gas connection and that unless he gave Coronel P3,000.00, he would be deported. Respondent Ongsip refused to give the money, saying that he was not afraid as he had committed no wrong and that he could not be deported because he is already a Filipino citizen. By the end of

August, a reading was made on the new meter and expectedly, it registered a sudden increase in gas consumption.

Thereafter, in October, 1966, a complaint for qualified theft was filed by petitioner against respondent Ongsip in the Pasay City Fiscal's Office docketed as I.S. No. 51441 (p. 3, Folder of Exhibits).

In February, 1967, pending investigation of the criminal complaint, petitioner disconnected respondent's gas service for alleged failure and/or refusal to pay his gas consumptions from July, 1965 to January, 1967 in violation of petitioner's regulation agreed upon in the 'Application for Gas Service' which states that:

"xx xx xx

"(8) The Corporation is authorized to discontinue service to the customer for any of the following reasons:

After 72 hours' notice in writing for

a) violation of the conditions herein set forth;

b) Non-payment of bills overdue;

xx xx" (p. 1, Folder of Exhibits).

Subsequently, the complaint was dismissed by the city fiscal of Pasay City in a resolution dated May 29, 1967, on the ground that --

"x x there is no evidence to establish the fact that there is an illegal installation or jumper in the premises of Isidro Ongsip and this is sustained by the fact that the prosecution witnesses did not attempt to excavate the premises of Isidro Ongsip in order to determine with certainty that there is an illegal installation. Without excavating the premises of Isidro Ongsip it is impossible to conclude with reasonable certainty that there is a jumper or illegal installation because illegal installation or jumper must not only proceed from an assumption but must be based from actual facts as proved" (pp. 4-6, Folder of Exhibits).

On July 14, 1967, following the dismissal by the investigating fiscal of the complaint for qualified theft and the disconnection by petitioner of his gas service, respondent Ongsip filed a complaint with the Court of First Instance of Rizal, Pasay City Branch VII for moral and exemplary damages against petitioner Manila Gas Corporation based on two causes of action, firstly: the malicious, oppressive and malevolent filing of the criminal complaint as a result of which "plaintiff has suffered mental anguish, serious anxiety, social humiliation, ridicule, embarrassment and degradation in the eyes of his business associates, friends, relatives and the general public"; and, secondly: the illegal closure of respondent Ongsip's gas service connection without court order and without notice of warning purely "to further harass, humiliate and ridicule plaintiff, thereby again exposing unjustly, cruelly and oppressively the plaintiff, as well as his family, to social humiliation and degradation, to public contempt and ridicule, to personal discredit and dishonor and thus causing the plaintiff and the members of his family irreparable injuries consisting of business and social humiliation, personal dishonor, mental anguish, serious anxieties, wounded feelings and besmirched reputation." In addition to attorney's fees and costs of litigation, respondent Ongsip likewise prayed that "pending final determination of the case that a writ of preliminary mandatory injunction forthwith issue, commanding the defendant corporation, its agents and employees to reconnect the gas service and supply at the residence and apartment of plaintiff at 2685 Park Avenue, Pasay City" (pp. 1-11, ROA).

On July 19, 1967, petitioner filed a motion to dismiss alleging the complaint states no valid cause of action. Respondent Ongsip filed an opposition thereto (pp. 12-24, ROA).

On August 11, 1967, the trial court issued an order denying petitioner's motion to dismiss (pp. 24-25, ROA).

Consequently, on September 8, 1967, petitioner filed its answer stating that the filing of the criminal complaint in the Pasay City Fiscal's Office which was made the basis of the first cause of action was precipitated by the discovery of an illegal by-pass tube or "jumper" in the kitchen cabinet and immediately below the gas burners in respondent's residence. With respect to the second cause of action, petitioner stated that the cutting-off or the disconnection of private respondent's gas service was on account of the latter's failure to settle and pay outstanding and due payments representing gas consumptions from July, 1965 to January, 1967. In both instances, according to petitioner, there was no intent to threaten, ridicule, embarrass or humiliate respondent Ongsip. A counterclaim for actual or compensatory damages and exemplary damages was interposed therein (pp. 24-31, ROA).

In the meantime, the court had issued an order dated September 6, 1967 granting the writ of preliminary mandatory injunction as prayed for in the complaint for damages upon respondent Ongsip's filing of a bond in the amount of P10,000.00 (pp. 33-34, ROA).

On May 2, 1972, the trial court rendered its decision

"(a) Ordering defendant to pay plaintiff:

"(1) P50,000.00 as moral damages in the FIRST CAUSE OF ACTION;

"(2) P10,000.00 as exemplary damages in the FIRST CAUSE OF ACTION;

"(3) P30,000.00 as moral damages in the SECOND CAUSE OF ACTION;

"(4) P5,000.00 as exemplary damages in the SECOND CAUSE OF ACTION;

"(5) P10,000.00 as attorney's fees; and

"(6) the costs of the suit; AND

"(b) Dismissing the defendant's counterclaim" [pp. 44-76, ROA].

Within the reglementary period, petitioner appealed to the Court of Appeals assigning two errors, to wit:

"The lower court erred in concluding that the filing of the criminal complaint was motivated purely 'to harass, threaten, and ridicule' plaintiff despite clear and convincing evidence showing the actual existence of a gas jumper by-pass in plaintiff's establishment.

"The lower court erred in concluding without basis and findings of facts that the closure of plaintiff's gas service was arrogant and abusive despite provision of a contract to the contrary" (p. 7, Brief for Defendant-Appellant).

On July 6, 1976, the said Court rendered its decision, pertinent portions of which are quoted hereinbelow:

"We are inclined to concur with the court a quo that the existence of a 'jumper' was merely a presumption on the part of Coronel. Indeed the discrepancy or fluctuation in the gas consumption in appellee's place could very well be attributed to many factors, such as a defective meter or a reduction in the use of the appliances on the premises considering that the restaurant/hotel business is transient. Neither can appellant attribute any defect in the installation of the appliances to the appellee as the installation was undertaken by the former's employees (T.S.N. pp. 12-13, December 17, 1968). Similarly, the gas meter was installed by defendant corporation, so that when a report was made that the original meter was defective, a new one was installed (T.S.N., pp. 27-28, December 1, 1970).

"Again, according to the testimony of Delfin Custodio, mechanical engineer of defendant-appellant, the second meter that was installed on August 11, 1966 was replaced as being defective because 'some of its parts were

worn out and that it was not properly registering,' (T.S.N., pp. 14-15, December 2, 1970). Therefore, rather than impute the fluctuation in gas consumption to a 'jumper' in the service connection, it would be more in keeping with the circumstances of the case to attribute this to the faulty meter installed by defendant-appellant. Indeed, from the evidence for the appellant itself that the old installation was embedded in the cement wall (which was later changed by appellant to exposed pipes; t.s.n. p. 55, March 3, 1971). We are of the belief that it was unlikely for the appellee to install a 'jumper' in the cement wall, a conclusion which bears support in the report of the City Fiscal, Pasay City that 'Isidro Ongsip was agreeable to have his place excavated and demolished provided that if there is no illegal installation or jumper found in the premises, the Manila Gas Corporation should answer for whatever damages that may be incurred in connection with its excavation of the premises 'which offer was declined by appellant, indicating that it was not certain as to the existence of such jumper (Resolution, Exhibit 'D'). In the light of the foregoing, appellant's first assignment of error must necessarily fail.

"Anent the second assignment of error, it appears that the gas service to appellee's compound was disconnected on the basis of non-payment of three-months bills, which were admittedly computed only on the average consumption registered, without benefit of meter reading (T.s.n. p. 13, April 30, 1971), and without previous notice of disconnection or reminder to pay (T.s.n. pp. 44-45, id., p. 30, May 18, 1971).

"Considering that the availability of the gas service was of utmost importance to appellee in the pursuit of his business venture (hotel-motel restaurant), it is not difficult to foresee the losses that the business must have incurred as a consequence of appellant's unwarranted and arbitrary act. It may not be amiss to take note at this juncture that in assessing the damages in favor of appellee, the court a quo did not award him actual damages, but merely moral and exemplary damages plus attorney's fees pursuant to Articles 2208 paragraphs (1) and (11); Articles 2217, 2219 paragraph (8) and 2229 of the New Civil Code. And, considering further the provisions of Article 2216 of said Code:

"No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the Court, according to the circumstances of each case;

which is amply supported by the evidence on record, taking into consideration appellee's standing in the community, WE find that the award must be sustained.

"WHEREFORE, the decision appealed from is hereby affirmed in toto, it being in accordance with the law and evidence adduced during the trial. Costs against appellant" (pp. 75-85, rec.).

Hence, on September 1, 1976, Manila Gas Corporation filed a petition for review by way of appeal to this Court based on the following grounds, to wit:

"I. The decision is not supported by the facts and the evidence. Rather, the decision is belied and rebuked by the clear and overwhelming evidence.

"A. The finding that witness Mariano Coronel is an unreliable witness is totally unsupported by any evidence.

"B. The filing of the criminal complaint against Ongsip was not actuated by malice on the part of petitioner.

"C. The filing of the criminal complaint against respondent Ongsip was based on probable cause.

"D. The closure of Ongsip's gas service was made after due notice to pay his back accounts was given and after a warning of disconnection.

"II. The decision of respondent court is contrary to settled jurisprudence enunciated by this Honorable Supreme Court and is unsupported by any evidence.

"A. Advice of counsel is a complete defense against a suit for malicious prosecution.

"III. The decision of respondent court on the Second Cause of Action of respondent Ongsip is based on a misapprehension of facts.

"IV. Under the facts and the law, petitioner is not liable for moral and exemplary damages.

"V. Assuming arguendo that the petitioner is liable for moral and exemplary damages, the amount awarded by the trial court and affirmed by the Court of Appeals are grossly exorbitant as to call for a review thereof" (pp. 22-23, rec.).

On December 13, 1976, this Court, after considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals, private respondent's comment thereon as well as petitioner's reply to said comment, resolved to GIVE LIMITED DUE COURSE to the petition as to whether or not the damages awarded by the trial court as affirmed by the Court of Appeals per its decision of July 6, 1976 are excessive and should be reduced and to TREAT the petition for review as a special civil action.

WE are thus constricted to a single issue in this case: whether or not the amount of moral and exemplary damages awarded by the trial court and affirmed by the Court of Appeals is excessive.

Article 2217 of the Civil Code states that "moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission." On the other hand, Article 2229 provides that "exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition, to the moral, temperate, liquidated or compensatory damages" (*italics supplied*).

The first cause of action, for which respondent Ongsip was awarded moral and exemplary damages in the amount of P50,000.00 and P10,000.00, respectively, is predicated on Article 2219 of the Civil Code which states that "moral damages may be recovered in the following and analogous cases: x x x (8) malicious prosecution; xx x."

To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution. (*Salao vs. Salao*, 70 SCRA 65 [March 16, 1976]; *Ramos vs. Ramos*, 61 SCRA 284 [December 3, 1974]; *Solis & Yarisantos vs. Salvador*, 14 SCRA 887 [August 14, 1965]; *Buenaventura, et al. vs. Sto. Domingo, et al.*, 103 Phil. 239 [1958]; *Barreto vs. Arevalo*, 99 Phil. 771 [1956]).

In the instant case, however, there is reason to believe that there was malicious intent in the filing of the complaint for qualified theft. This intent is traceable to that early afternoon of August 17, 1966, when petitioner's employees, upon being ordered, came to private respondent's residence and changed the defective gas meter and tube connections without notice. In other words, respondent Ongsip had no opportunity to observe the works. Nonetheless, if indeed he had installed an illegal by-pass tube or jumper, he could have easily asked for its immediate removal soon after his houseboy told him what petitioner's employees did. As established by the facts, he had not even attempted to refuse entrance to petitioner's employees headed by Mariano Coronel nor to question their authority upon their return later that same afternoon with a photographer. Little did he realize that the pictures of the premises that were being taken would be used as evidence against him. Surprisingly, when respondent Ongsip asked Coronel why they were taking pictures, Coronel just gave him a calling card and instructed him to go to his office. It was quite an unusual gesture. Obviously, Coronel had something in mind. As correctly observed by the trial court in its decision --

"A significant fact brought about by the testimony of Coronel himself is the total absence of immediate

accusation against Plaintiff right at the very moment when the by-pass valve was allegedly discovered. Right then and there Coronel should have told Plaintiff that he was using a by-pass valve and in effect stealing gas from Defendant. There would have been nothing wrong with that. The circumstance was similar to that of catching a thief in flagrante delicto. But the truth is that when Coronel and his men entered Plaintiff's compound and made changes therein, Plaintiff was sleeping. He had no knowledge of what was then going on. Coronel and his men told the 'boy' of Plaintiff that the changes were being made so that the consumption of gas could be decreased. So that when Plaintiff woke up at four o'clock in the afternoon, Coronel and his men had already made the changes and had already gone. They returned however at five o'clock, this time with a photographer. This was the time when Plaintiff met Coronel. Here was then the opportunity for Coronel to confront Plaintiff with the allegedly discovered 'by-pass valve' and bluntly, even brutally, tell him that there was thievery of gas. This, Coronel did not do. xx xx x."

It bears noting that when he was informed as to the existence of a 'jumper' in his gas connection, respondent Ongsip did not show any sign of fear or remorse and did not yield to the threatening demand of Coronel. Experience tells us that this is not the attitude of a guilty person. On the contrary, this is the attitude of someone who knows how to take a firm stand where his principles and rights are concerned. To prove his innocence, he was even willing to have his place excavated but petitioner would not dare take the consequences. Besides, Delfin Custodio, petitioner's own mechanical engineer, testified that the second gas meter was replaced as being defective because "some of its parts were worn out and that it was not properly registering."

Evidently, petitioner Manila Gas Corporation, in failing to recover its lost revenue caused by the gas meter's incorrect recording, sought to vindicate its financial loss by filing the complaint for qualified theft against respondent Ongsip knowing it to be false. It was actually intended to vex and humiliate private respondent and to blacken his reputation not only as a businessman but also as a person. Qualified theft is a serious offense indicating moral depravity in an individual. To be accused of such crime without basis is shocking and libelous. It stigmatized private respondent causing him emotional depression and social degradation. Petitioner should have realized that what is believed to be a vindication of a proprietary right is no justification for subjecting one's name to indignity and dishonor. One can thus imagine the anguish, anxiety, shock and humiliation suffered by respondent Ongsip. The fact that the complaint for qualified theft was dismissed by the Pasay City fiscal is no consolation. The damage had been done. Necessarily, indemnification had to be made.

The trial court awarded P50,000.00 as moral damages and P10,000.00 as exemplary damages.

WE give due consideration to respondent Ongsip's social and financial status as a businessman and the mental anguish he suffered as a result of the false imputation. However, We also consider petitioner's financial capability. Petitioner is a public utility corporation whose primary concern is service to the people, the profit motive being merely secondary. Under the circumstances, We are of the opinion that the award of moral and exemplary damages should be reduced to P25,000.00 and P5,000.00, respectively. This award is sanctioned by Article 2234 of the Civil Code which states that:

"When the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages" (italics supplied).

On the second cause of action which is based on the illegal disconnection of respondent Ongsip's gas service constituting breach of contract, the trial court awarded P30,000.00 as moral damages and P5,000.00 as exemplary

damages.

Petitioner contends that the disconnection was on account of respondent Ongsip's failure to pay his gas consumptions for more than three months. While private respondent admits having accounts with petitioner, he denies having been notified thereof or having received any warning of the disconnection. In determining the propriety of the award, it is material to establish that prior notice or warning had been given to respondent Ongsip before the gas service was disconnected, in accordance with the terms of the contract. In this regard, We find the trial court's observation in its decision to be well-founded, to quote:

"Defendant would insist that the household helpers inside Plaintiff's premises refused to receive notices or to sign them. Defendant has not given the Court any plausible reason why these persons would refuse to receive, or sign for, notices of demands for payments or warnings of threatened disconnection of the service. The very evidence of Defendants indicates that Plaintiff had long been a customer of Defendant. Plaintiff has been paying his bills. Plaintiff had not suffered any financial reverses. As a matter of fact, upon the suggestion of the Court, Plaintiff readily made payment of his account with Defendant. He made payment not because the service would be restored. When he made the payment the Court had already issued a mandatory preliminary injunction, ordering Defendant to restore gas service in the premises of Plaintiff. Plaintiff made the payment to comply with the suggestion of the Court because the Court rather than enforce its order, would like the parties to settle the case amicably.

"What is peculiar in the stand of Defendant is that while it would insist on the giving of notices and warnings, it did not have any competent and sufficient evidence to prove the same. Demands in open court were made by Plaintiff's counsel whether Defendant could show any written evidence showing that notices and warnings were sent to Plaintiff. Not a single piece of evidence was produced. Normally, if a notice is refused, then the original and its copies would still be in the hands of the public utility concerned. In the instant case, it has to be repeated, not a single copy, original or duplicate, triplicate, etc. of any notice to pay or warning of disconnection was produced in court. The court cannot believe that Defendant, as what the testimonies of its witnesses would like to impress upon this Court, conducts its business that way. Defendant is a big business concern and it cannot be said that it treats its business as a joke. Its personnel should realize this, for only with such an awareness can they respond faithfully to their responsibilities as members of a big business enterprise imbued with public interest over which the Philippine Government is concerned."

Quite obviously, petitioner's act in disconnecting respondent Ongsip's gas service without prior notice constitutes breach of contract amounting to an independent tort. The prematurity of the action is indicative of an intent to cause additional mental and moral suffering to private respondent. This is a clear violation of Article 21 of the Civil Code which provides that "any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages." This is reiterated by paragraph 10 of Article 2219 of the Code. Moreover, the award of moral damages is sanctioned by Article 2220 which provides that "willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith" (*italics supplied*).

WE are not unmindful of the fact that at the time the gas service was disconnected, respondent Ongsip admitted having been in default of at least three months' bills. WE have established however that no notice to that effect has been served on him. It must be pointed out that respondent Ongsip is an old man involved in a number of business and social undertakings. It is quite natural and understandable that at times he forgets some minor obligations and details of his concern. This is the time when reminders and friendly notices become indispensable. The rudiments of procedural due process dictate that he should have been notified of any back accounts. In the past, respondent Ongsip had not been remiss in the payment of his bills. Petitioner should have at least accorded him the courtesy, if not the right, as per contract, of being notified before effecting disconnection so that he could take steps or

initiate measures to avoid such embarrassment. Apparently, such misconduct or omission on the part of petitioner formed part of a malevolent scheme to harass and humiliate private respondent, exposing him to further ignominy and greater mental torture. Respondent Ongsip's default in payment cannot be utilized by petitioner to defeat or nullify the claim for damages. At most, this circumstance can be considered as a mitigating factor in ascertaining the amount of damages to which respondent Ongsip is entitled. In consequence thereof, We reduce the amount of moral damages to P15,000.00. The award of P5,000.00 as exemplary damages, on the other hand, is sustained, being similarly warranted by Article 2234 of the Civil Code aforequoted as complemented by Article 2220.

The award of attorney's fees in the amount of P10,000.00 is justified under the circumstances.

WHEREFORE, PETITIONER MANILA GAS CORPORATION IS HEREBY DIRECTED TO PAY

(1) RESPONDENT ISIDRO M. ONGSIP P25,000.00 AS MORAL DAMAGES AND P5,000.00 AS EXEMPLARY DAMAGES FOR THE FIRST CAUSE OF ACTION, P15,000.00 AS MORAL DAMAGES AND P5,000.00 AS EXEMPLARY DAMAGES FOR THE SECOND CAUSE OF ACTION, AND P10,000.00 AS ATTORNEY'S FEES; AND

(2) THE COSTS.

MODIFIED AS ABOVE STATED, THE DECISION OF RESPONDENT COURT OF APPEALS IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

SO ORDERED.

Teehankee, Acting C.J., Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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