

**BAZA MARKETING CORPORATION, PLAINTIFF-APPELLANT, VS.
BOLINAO SECURITY AND INVESTIGATION SERVICE, INC.,
DEFENDANT-APPELLEE.**

G.R. No. L-32383. September 30, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is an action filed in the Court of First Instance of Manila for the robbery of the value of stolen office equipments, attorney's fees and damages. After the issues were joined and a pre-trial conducted, the parties, assisted by their respective counsels, submitted the following "Admissions & Stipulations of Facts":

"COME NOW the above-named parties, Baza Marketing Corporation as plaintiff and Bolinao Security & Investigation Service, Inc. as defendant, through their respective counsel, and to this Honorable Court most respectfully allege, state and submit, namely:

(A) That during the pre-trial conference before this Honorable Court on January 16, 1968, the following admissions were made by the parties, to wit:

- 1) That the parties ADMITTED that the security guard, Jose Silvestre y Fajarillo, had been convicted by the Court of First Instance of Manila, which fact is more particularly described in the allegation in paragraph 6 of the complaint;
- 2) That the parties ADMITTED that the above-named security guard is insolvent and can not satisfy the civil liability imposed in the judgment of conviction, which facts are more particularly described in the allegation in paragraphs 6 and 7 of the complaint;

(B) That in addition to the above admissions made during the aforementioned pre-trial conference, the parties submit the following stipulation of facts, to wit:

- 1) That the parties ADMIT that Defendant is a corporation organized and existing in accordance with the laws of the Republic of the Philippines, under the name Bolinao Security & Investigation Service, Inc., with office address at 1161 M. dela Fuente Street, Sampaloc, Manila;
- 2) That the parties ADMIT that the plaintiff is a lessee of the Chamber of Commerce of the Philippines at its only building located at Magallanes Drive, Manila, which fact is particularly described in paragraph 2 of the complaint;
- 3) That the parties ADMIT that on May 1, 1965, Bolinao Security & Investigation Service, Inc. entered into a contract with the Chamber of Commerce of the Philippines whereby it agreed to furnish security guards to the latter for the purpose of guarding and protecting its properties and installations located at Magallanes Drive, Manila from theft, pilferage, robbery, arson or other unlawful acts by strangers or third parties, and the Chamber of Commerce of the Philippines agreed to pay each guard assigned for said purpose the amount of P200.00 a month;

4) That the parties ADMIT that as of November 26, 1965, the aforementioned contract was in force and Jose Silvestre Y Fajarillo was one of the security guards furnished by the defendant to the Chamber of Commerce of the Philippines to guard its properties and installations as provided in the contract;

5) That parties ADMIT that plaintiff has had no contract with the defendant for security services of its office equipment and supplies and therefore its office equipment, supplies and other properties were never accounted for and placed under the control of the defendant or any of its security guards assigned in the premises of the Chamber of Commerce of the Philippines;

6) That the parties ADMIT that Jose Silvestre Y Fajarillo was duty bound to and was in fact guarding the building, properties and installations of the Chamber of Commerce of the Philippines on November 26, 1965, and that in said building were contained the office equipments and supplies as well as the office of the plaintiff;

7) That the parties ADMIT that Jose Silvestre Y Fajarillo while he was thus guarding the building, properties and installations of the Chamber of Commerce of the Philippines, conspired and confederated with an outsider, Ernesto Secreto Y Arcenas, who was only a 16-year old boy, and by mutually helping each other, did then and there wilfully, unlawfully and feloniously, by means of force upon things and with intent of gain and against the will of the owner thereof, allowed Ernesto Secreto Y Arcenas to gain entrance to the office of the plaintiff by passing thru a hole of the building left so when an air conditioner placed therein was taken out to be repaired, and once inside, stole and carried away therefrom, office equipments of the plaintiff all valued at P5,440.00, which facts are specifically mentioned in paragraph 4 of the complaint;

8) That the parties ADMIT that on June 16, 1966 the Court rendered its decision in the aforesaid criminal case, the dispositive portion of which reads as follows:

'WHEREFORE, the Court sentences defendant Jose Silvestre Y Fajarillo to suffer an indeterminate penalty ranging from ONE (1) YEAR, EIGHT (8) MONTHS and ONE (1) DAY of prision correccional, as minimum, to FOUR (4) YEARS, NINE (9) MONTHS and ELEVEN (11) DAYS, also of prision correccional, as maximum, and defendant Ernesto Secreto Y Arcenas, to suffer an indeterminate penalty of from FOUR (4) MONTHS of arresto mayor, as minimum, to ONE (1) YEAR, EIGHT (8) MONTHS and ONE (1) DAY of prision correccional, as maximum.

x x x x.'

'The Court further orders both defendants to indemnify, jointly and severally, the Baza Marketing Corporation in the sum of P5,440.00, with subsidiary imprisonment in the event of insolvency not to exceed one-third (1/3) of their respective principal penalties, and to pay the costs pro-rata.

'SO ORDERED.'

9) That the parties ADMIT that after the foregoing decision became final and executory, a writ of execution was issued on August 13, 1966 for the enforcement of the civil liability of both accused as decreed in the decision, but the same was returned unsatisfied, per return of the sheriff dated August 22, 1966, on the ground of insolvency of both accused;

10) That the parties ADMIT that the extent of the damages of the plaintiff is P5 ,440.00;

11) That the parties ADMIT that plaintiff made demands in writing on defendant for it to pay the amount of P5 ,440.00 which is the total value of the stolen office equipments but that the defendant refused to pay on the ground that it is not subsidiarily liable for whatever civil liability was adjudged against Jose Silvestre Y Fajarillo in the aforementioned criminal case;

12) That plaintiff and defendant hereby incorporate by way of reference and make as an integral parts of this pleading, the following documents which were admitted as exhibits in Civil Case No. 152058 of the City Court of Manila where the instant case was originally tried and decided, to wit:

Photostat copy of the Agreement consisting of three (3) pages between the Bolinao Security & Investigation Service, Inc. and the Chamber of Commerce of the Philippines, dated May 1, 1965 (marked as Exhibit 'A').

Duplicate copy of the Notice of Order Decision dated July 15, 1966 in Criminal Case No. 80784 of the Court of First Instance of Manila, entitled 'People of the Philippines versus Jose Silvestre Y Fajarillo and Ernesto Secreto Y Arcenas' rendered on June 16, 1966 with the Decision consisting of eight (8) pages attached (marked as Exhibit 'B').

Portion of the decision pointing out the aggravating circumstance of grave abuse of confidence on the part of the defendant Jose Silvestre Y Fajarillo and already marked as Plaintiff's Exhibit 'B-1'.

Writ of Execution issued by the Court of First Instance and already marked as Plaintiff's Exhibit 'C'.

The Sheriff's Return dated August 22, 1966 of Deputy Sheriff, Dante Ortiz, and already marked as Plaintiff's Exhibit 'D'.

13) That plaintiff and defendant submit to the discretion of this Honorable Court the propriety of awarding the damages and attorney's fees prayed for in their complaint and counterclaim, respectively, and the amount thereof.

Manila, Philippines, April 26, 1968.

(Sgd .) ROLANDO S. CRISOL

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(Sgd .) MARIO F. RACELA

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Solely on the basis of the above admissions and stipulations, the trial court rendered its Decision dismissing the complaint on the following ratiocination:

"And so from this the sole issue to be solved by this Court, is whether Defendant which furnished security guards to the Chamber of Commerce Building, wherein Plaintiff was one of the tenants, is subsidiarily liable for the civil liability imposed on one its security guards, as it has been proven that he is insolvent. Plaintiff's action is based on Art. 103 RPC, which requires three requisites before such a subsidiary liability may arise: first, that the employer is engaged in a kind of industry; second, that the employee is insolvent and third, that the crime was committed by the employee in the discharge of his duties. The first two requisites are present for the furnishing of security guards is engaging in some kind of industry, and the Stipulation of Facts shows that the security guard is insolvent. But was the crime committed while in the discharge of his duties? This Court does not think so. The duty of the security guard was to guard the premises assigned to him. The final decision finding the security guard guilty of robbery shows that in connivance with a 16-year old, gaining entrance through the opening left by the repair of the air-conditioning unit, the robbers made away with office equipment owned by Plaintiff in the sum of P5 ,440.00. It is clear that this connivance was not in the discharge of his duties as security guard so that Defendant cannot be subsidiarily held liable for such an act.

The complaint is, therefore, dismissed with costs against Plaintiff.

SO ORDERED."

The plaintiff's appeal to the Court of Appeals was certified by the said Court to the Supreme Court on the ground that the appeal involves pure questions of law.

Plaintiff-appellant has assigned a single error in its brief, to wit:

"THE LOWER COURT ERRED IN HOLDING THAT THE DEFENDANT'S EMPLOYEE WAS NOT IN THE DISCHARGE OF HIS DUTY WHEN HE COMMITTED THE CRIME AND THEREFORE THE DEFENDANT EMPLOYER COULD NOT BE HELD SUBSIDIARILY LIABLE."

The trial court expressed the view that defendant- appellee may not be held liable for the loss of the office equipments of plaintiff-appellant inasmuch as the security guard was not acting in the discharge of his duties as such when he connived with Ernesto Secreto, who actually committed the robbery. The clear import of the trial court's ruling is that the subsidiary liability under Article 103 of the Revised Penal Code may only arise if the employee commits the crime of which he was found guilty in line or in pursuance of the discharge of his assigned duties.

Defendant- appellee agrees with the conclusion arrived at by the trial court but not on the ground expressed by it. Defendant- appellee denies liability under Article 103 of the Revised Penal Code for the reason that the security guard in question was not assigned by defendant- appellee to guard the plaintiff-appellant's properties, his duty being to act as a security guard of the properties of the Chamber of Commerce of the Philippines. Defendant- appellee would admit that if the properties which were stolen belonged to the Chamber of Commerce of the Philippines, defendant- appellee would be liable inasmuch as the unlawful taking occurred in the performance of discharge of the duties of the security guard.

Plaintiff-appellant, on the other hand, maintains that the subsidiary liability of the employer under Article 103 of the Revised Penal Code does not require that the employee commit the crime within the scope of his assigned tasks. Instead, it is enough if the employee committed the act while he was doing his assigned task as such employee, or on the occasion thereof, it being immaterial whether the act or crime committed is a part of the employee's duty or assigned task. Plaintiff-appellant cites the example given by recognized commentators on Criminal Law to illustrate his point, to wit: "Where a workman of a construction company stole some things while he was making minor repairs in a house and after being prosecuted was found guilty and the workman cannot satisfy his own civil liability, under such a circumstance, the company is liable subsidiarily for the restitution of the things or for the payment of their value." (Reyes and Revised Penal Code, 1960 edition, pp. 632-633; Albert, Commentaries on the Revised Penal Code, 1945 edition, p. 282.) It is argued that, as in the given example, the subsidiary liability of the employer may be im-posed even if the crime committed was not in the discharge of the duties of the security guard, it not being a part of his duties to commit theft or robbery.

We sustain the trial court's dismissal of the case. The law makes the employer subsidiarily liable for the civil liability arising from a crime committed by an employee "in the discharge of his duties." (Article 103, Revised Penal Code.) This subsidiary liability does not arise from any and all offenses that the employee may commit, but limited to those which he shall be found guilty of in the discharge of his duties. The law does not say, as urged by plaintiff-appellant, that the crime of the employee must be the one committed "while in the discharge of his duties." It could not be contemplated that an employer will be held responsible for any misdeed that his employee could have done while performing his assigned tasks. Thus, it is neither just nor logical that, if a security guard committed robbery in a neighboring establishment near the one he is assigned to guard, or raped a woman passerby in the course of his tour of duty, his employer should be made subsidiarily liable for his said misdeed. In such circumstances, it cannot be said that the crime was committed by the employee "in the discharge of his

duties."

This conclusion is supported by the ruling in *Marquez vs. Castillo*, 68 Phil. 568, wherein it was held that the subsidiary liability of the employer does not arise where the owner of the car which figured in an accident causing the death of one and injuries to another, the said accident not having occurred in the course of the performance of the duties for which the driver had been hired, it appearing therein that the driver took the car without the employer's knowledge and used it as if it were his own.

In the case at bar, the security guard was assigned to guard the building, properties and installations of the Chamber of Commerce of the Philippines. (Paragraph 6, Stipulations of Facts.) The contract for security service was between defendant- appellee and the Chamber of Commerce of the Philippines. (Paragraph 3, *Ibid.*) No contract was ever entered by the plaintiff-appellant and defendant- appellee for security services of its office equipments and supplies which were never accounted for and placed under the control of defendant- appellee or any of the security guards assigned in the premises of the Chamber of Commerce of the Philippines. (Paragraph 5, *Ibid.*) In conniving with another to steal or rob the office equipments of plaintiff-appellant, the security guard in question may not be said to have acted in the discharge of his duties as security guard. The circumstance that the office of plaintiff-appellant is in the same building for which defendant- appellee had a contract for security service does not materially change the legal implication of the said act. For all legal intents and purposes, the robbery could have been committed in a neighboring building or establishment, in which case, it may hardly be argued that the employer of the security guard should be made responsible for the consequences of such malefaction.

Plaintiff-appellant may not derive decisive support for his contention from the example given by the commentaries on Criminal Law hereinabove-mentioned. It is not correct to say that the employer's subsidiary liability will be imposed even when the act is not done in pursuance of the duties of the employee, the act of stealing not being included in an employee's assigned tasks; nor would an employer ever include among the duties of his employee the commission of a crime. The act contemplated in Article 103 of the Revised Penal Code is necessarily a crime from which civil liability had arisen but which could not be satisfied by the accused employee. The statutory limitation that the crime of the employee must have been committed "in the discharge of his duties" is clearly intended to exclude crimes not related to the performance of the duties assigned to him by his employer. The crime in question pertains to this latter category.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with costs against plaintiff-appellant.

SO ORDERED.

Makasiar, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.
Teehankee, J., (Chairman), in the result.

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