

JOSE V. NESSIA, PETITIONER, VS. JESUS M. FERMIN AND MUNICIPALITY OF VICTORIAS, NEGROS OCCIDENTAL, RESPONDENTS.

G.R. No. 102918. March 30, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Article 27 of the Civil Code accords judicial relief to "[a]ny person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty." This the trial court[1] applied in finding respondent Jesus M. Fermin, Mayor of Victorias, Negros Occidental, liable for damages for maliciously refusing to act on the vouchers of petitioner Jose V. Nessia covering the latter's claim for reimbursement of travel expense allowances. The Court of Appeals[2] however ruled that evidence as well as the complaint itself did not establish unjust inaction, hence, it reversed the court a quo and dismissed the case for lack of cause of action. Considering the disparity in the findings and conclusions of the lower courts, the version of the appellate court cannot readily be accepted, hence, We are constrained to scrutinize them more judiciously.

This recourse originated from the complaint filed against respondents Jesus M. Fermin and the Municipality of Victorias, Negros Occidental, by petitioner Jose V. Nessia for recovery of damages and reimbursement of expenses incurred in the performance of his official duties as the then Deputy Municipal Assessor of Victorias. The complaint theorized that Fermin deliberately ignored and caused the non-payment of the vouchers in question because Nessia defied the former's request to all municipal officials to register and vote in Victorias in the 1980 local elections.

In his answer with counterclaim, Fermin disputed the allegations in the complaint and countered that the claims of Nessia could not be approved because they exceeded the budgetary appropriations therefor.

On its part, Victorias concurred with the arguments of Fermin, and added that plaintiff Nessia was blamable for his predicament because he neither gave Fermin the justification for drawing funds in excess of the budgetary appropriations nor amended his vouchers to conform thereto.

Issues having been joined, the parties presented their evidence, except for Victorias which was declared in default for non-appearance at the pre-trial conference.[3] On 24 April 1987, judgment was rendered by the trial court in favor of Nessia.[4] On the basis of the evidence, the trial court found that Fermin maliciously refused to act on plaintiff's vouchers, bolstered by his inaction on Nessia's follow-up letters inquiring on the status thereof.

The court ruled that the vouchers were received by the secretary of Fermin thereby negating his contention that the vouchers were not received by him. But even if the vouchers never reached him, the trial court nevertheless held Mayor Fermin answerable because he should have made inquiries into their whereabouts upon receipt of Nessia's follow-up letters. In view of the foregoing, and the admission of Fermin at the trial that he did nothing on the vouchers, the court of origin awarded damages to Nessia, although less than what he prayed for.

Both Nessia and Fermin elevated the case to the Court of Appeals, Nessia praying for an increase in the award of moral and exemplary damages, and Fermin seeking exoneration from liability.

The Municipality of Victorias did not appeal.

On 19 July 1991, respondent appellate court dismissed Nessia's complaint on the ground of lack of cause of action because the complaint itself as well as Nessia's own testimony admitted that Fermin acted on the vouchers as may be drawn from the allegations that Fermin denied/refused the claims.

On the basis of its own findings, the Court of Appeals held that the real "situation before us is one in which plaintiff-appellant accuses defendant-appellant of failing to act on vouchers which are not shown to have been received by the latter; and even if received, could not be approved for payment because they were submitted late and were not supported by an appropriation."

Nessia now comes to Us on appeal under Rule 45 of the Rules of Court raising four (4) issues, namely: (1) whether respondent court may reverse the decision of the trial court which has become final and executory as against Victorias for failure to appeal therefrom; (2) whether respondent appellate court may grant affirmative relief to Victorias which did not appeal the trial court's decision; (3) whether respondent court erred in exonerating Fermin from malicious refusal to act on petitioner's claims; and, (4) whether respondent court erred in exonerating Fermin and Victorias from liabilities, which may be summarized into whether Fermin maliciously refused to act on the vouchers, hence, liable under Art. 27, and whether the dismissal of the complaint by respondent court absolved Victorias from liability, even though it did not appeal the decision of the trial court.

Before disposing of the merits of the case, We first resolve the issue raised by the Office of the Solicitor General that the assailed decision attached to the petition is not a certified true copy as required in Circular 1-88, par. 3, hence, the petition should have been dismissed. The allegation is erroneous because the challenged decision, Annex "A" of the petition,[5] is actually certified by Atty. Leandro D. Rebong, a Division Clerk of Court of respondent Court of Appeals.

On the first question, We are inclined to sustain the trial court primarily because its appraisal of conflicting testimonies is afforded greater weight and respect. Likewise, finding no error in its appreciation of the contradictory testimonies relating to the dispute on the receipt of the vouchers, the determination of the trial court that they were actually received should be followed. Consequently, as between the Findings of the Court of Appeals drawn simply from the reading of the records and the transcript of stenographic notes, and the determination of the trial court which heard the case, the opinion of the latter deserves greater acceptance, even if both conclusions are supported by evidence.

The claim that the name inscribed on the lower left portion of the transmittal letter does not appear to be the customary signature of the Mayor's secretary does not convincingly show that she did not receive the vouchers, nor was it convincingly shown that the signature purportedly hers was not actually her handwriting. Since proof of the receipt of the vouchers has not been confuted, the secretary should have indicated on the letter she received that the enclosures therein were not so enclosed or attached, otherwise, it could be presumed that they were actually enclosed or attached thereto, and properly received by the addressee. Moreover, the version favoring receipt of the vouchers carries the presumption of regularity in official acts, more so that the handwritten name of the secretary, which closely resembles her signature, immediately follows the list of enclosures.

As regards the alleged response of Fermin to Nessia, i.e., "basta indi lang ako mag-approve sang vouchers mo", the same should have been interpreted in Ilonggo as "refusal to approve or disapprove" considering that Nessia testified on it to clarify an earlier statement that "I presented him my vouchers but he did not act on it (sic)."[6]

In *Roque v. Buan* We held[7] -

"If the decision of the Court of Appeals on the controversial matter suffers, as it does, from some ambiguity, the doubt should be resolved to sustain the trial court in the light of the familiar and accepted rule that 'the judge who tries a case in the court below, has vastly superior advantage for the ascertainment of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye, the cold words of the witness as transcribed upon the record, knowing at the same time, from actual experience, that more or less, of what the witness actually did say, is always lost in the process of transcribing. But the main difficulty does not lie here. There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there was no doubt as to the identity of the words' (????, Comments on the Rules of Court)."

It is further contended that Nessia may not claim relief under Art. 27 because his theory of unjust inaction is incompatible with his allegations in the complaint that Fermin denied/refused the vouchers. In support of this view the cases of *Sta. Ana v. Maliwat*[8] and *Cunanan v. Amparo*[9] were cited, where We ruled that a pleader is not allowed to contradict his own pleading.

We do not agree, however, that the allegations in the complaint alluded to, i.e., "plaintiff presented the said claims to the defendant Mayor Jesus Fermin, but refused and continued to refuse the payments thereof" and "defendants refused and continue to refuse to pay," should be construed as admission of the act of disapproval of the claims. Refusal to pay is not inferred solely from disapproval of claims but from inaction thereon as well. Accordingly, the said allegations cannot be considered as contradictory to Nessia's theory of unjust inaction.

On the defense of lack of appropriation, while it is true that Fermin may not be compelled by mandamus to approve vouchers because they exceeded the budgetary appropriations, he may, nevertheless, be held liable for damages under Art. 27 for malicious inaction because he did not act on the vouchers. This provision against official inaction finds its ally in Sec. 3, par. (f), of R.A. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act," which criminalizes "[n]eglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of x x x discriminating against any interested party."

It is apparent that public officials are called upon to act expeditiously on matters pending before them. For only in acting thereon either by signifying approval or disapproval may the plaintiff continue on to the next step of the bureaucratic process. On the other hand, official inaction brings to a standstill the administrative process and the plaintiff is left in the darkness of uncertainty. In this regard, official "inaction" cannot be equated with "disapproval."

In *Baldivia v. Lota*, We dismissed on appeal the petition to compel by mandamus approval of certain vouchers, even though the disapproval was politically motivated, on the basis that respondent Mayor was bound to disapprove vouchers not supported by appropriations.[10] In the penultimate paragraph, We made the following pronouncement:

"Indeed, respondent could have, and should have, either included the claim of petitioners herein in the general budget he is bound to submit, pursuant to section 2295 of the Revised Administrative Code, or prepared a special budget for said claim, and urged the municipal council to appropriate the sum necessary therefor. In any event, if the municipal mayor fails or refuses to make the necessary appropriation, petitioners may bring an action against the municipality for the recovery of what is due them and after securing a judgment therefor, seek a writ of mandamus against the municipal council and the municipal mayor to compel the enactment and approval of the appropriation ordinance necessary therefor (19 R.C.L. 1951-1052; 34 Am. Jur., 950-951; 35 Am. Jur., 21)."

This is precisely what the petitioner did; he filed a collection case to establish his claim against Fermin and the Municipality of Victorias, which Nessia satisfactorily proved.

As regards the second question, it is settled that a non-appellant cannot, on appeal, seek an affirmative relief. We ruled in *Medida v. Court of Appeals*[11] that –

"[A]n appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below (*Alba vs. Santander, et al.* 160 SCRA 8 [1988]). He cannot impugn the correctness of a judgment not appealed from by him. He cannot assign such errors as are designed to have the judgment modified. All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court a quo nor raised in the appellant's assignment of errors or arguments (*Aparri vs. Court of Appeals, et al.*, 13 SCRA 611 [1965]; *Carbonel vs. Court of Appeals, et al.*, 147 SCRA 565 [1987]; *Dizon, Jr. vs. National Labor Relations Commission, et. al.*, 181 SCRA 472 [1990].)."

That the decision of respondent court essentially exonerated the Municipality of Victorias from liability is a mere consequence of the dismissal of the case for lack of cause of action, although erroneously. In any case, this matter has become irrelevant considering the conclusion herein reached.

Incidentally, in his memorandum, counsel for private respondent insinuates that the lower courts may have overlooked that 6 April 1980, the alleged date when Nessia supposedly went to Fermin's office and told the latter to go to court instead, was a Sunday. This is not correct, for it is apparent from the transcript of stenographic notes that the date is actually 16 April 1980, a Wednesday. Indeed, such allusion that is intended merely to gain undue advantage over the opponent does not square well with the sporting tenets of fair play.

WHEREFORE, the petition is GRANTED and the assailed decision of 19 July 1991 of respondent Court of Appeals as well as its 19 November 1991 Resolution denying Nessia's motion for reconsideration are SET ASIDE, and the decision of 24 April 1987 of the Regional Trial Court, Branch LXI, Kabankalan, Negros Occidental,[12] is REINSTATED and AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Regional Trial Court of Kabankalan, Branch 61, Negros Occidental, Judge Artemio L. Balinas, presiding.

[2] Justice Santiago N. Kapunan, ponente; Justices Segundino G. Chua and Luis L. Victor, concurring, CA-G.R. CV No. 18535. A motion to reconsider the decision was denied.

[3] Records, p. 83.

[4] "WHEREFORE, premises considered, the Court hereby renders judgment in favor of the plaintiff and against defendants and ordering the latter the following: 1) To pay plaintiff jointly and severally the sum of One Thousand Four Hundred Twenty Four Pesos & 75/100 (P1,424.75) for reimbursement of his traveling and food expenses incurred in connection with his official duties, with interest of 12% per annum from the filing of this complaint until fully paid; 2) Defendant Mayor Jesus Fermin is hereby ordered to pay plaintiff the sum of Ten Thousand Pesos (P10,000.00) as moral damages and Two Thousand Pesos (P2,000.00) as exemplary damages; 3) To pay plaintiff jointly and severally the sum of Three Thousand Pesos (P3,000.00) as attorney's fees. 4) To pay costs."

[5] Rollo, pp. 19-25.

[6] TSN, 14 May 1985, p. 12.

[7] No. L-22459, 31 October 1967; 21 SCRA 642, 648.

[8] No. L-23023, 31 August 1968; 24 SCRA 1018.

[9] 80 Phil 227 (1948).

[10] No. L-12716, 30 April 1960; 107 Phil 1099, 1104 (1960). As in the case at bar, the motive in Baldivia was political. We quote the observations of then Judge Conrado M. Vasquez in the trial court's decision: "x x x while the Court feels itself powerless to grant the relief prayed by the petitioners, it could not help but express its sympathy with their situation, and its displeasure with the manner by which they had been deprived of a claim which appeared to be valid and meritorious. This case is another manifestation of that unfortunate phenomenon in local politics in this country wherein considerations of public interest have been set aside for the satisfaction of petty factional jealousies and sacrificed on the altar of political rivalries."

[11] G.R. No. 98334, 8 May 1992; 208 SCRA 887, 898-899.

[12] See footnote 4.

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