

FAR EAST BANK AND TRUST COMPANY, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, LUIS A. LUNA AND CLARITA S. LUNA, RESPONDENTS.

G.R. No. 108164. February 23, 1995

Ponente: VITUG, J.

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VITUG, J.:

Some time in October 1986, private respondent Luis A. Luna applied for, and was accorded, a FAREASTCARD issued by petitioner Far East Bank and Trust Company (“FEBTC”) at its Pasig Branch. Upon his request, the bank also issued a supplemental card to private respondent Clarita S. Luna.

In August 1988, Clarita lost her credit card. FEBTC was forthwith informed. In order to replace the lost card, Clarita submitted an affidavit of loss. In cases of this nature, the bank's internal security procedures and policy would appear to be to meanwhile so record the lost card, along with the principal card, as a “Hot Card” or “Cancelled Card” in its master file.

On 06 October 1988, Luis tendered a despedida lunch for a close friend, a Filipino-American, and another guest at the Bahia Rooftop Restaurant of the Hotel Intercontinental Manila. To pay for the lunch, Luis presented his FAREASTCARD to the attending waiter who promptly had it verified through a telephone call to the bank's Credit Card Department. Since the card was not honored, Luis was forced to pay in cash the bill amounting to P588.13. Naturally, Luis felt embarrassed by this incident.

In a letter, dated 11 October 1988, private respondent Luis Luna, through counsel, demanded from FEBTC the payment of damages. Adrian V. Festejo, a vice-president of the bank, expressed the bank's apologies to Luis. In his letter, dated 03 November 1988, Festejo, in part, said:

“In cases when a card is reported to our office as lost, FAREASTCARD undertakes the necessary action to avert its unauthorized use (such as tagging the card as hotlisted), as it is always our intention to protect our cardholders.

“An investigation of your case however, revealed that FAREASTCARD failed to inform you about its security policy. Furthermore, an overzealous employee of the Bank's Credit Card Department did not consider the possibility that it may have been you who was presenting the card at that time (for which reason, the unfortunate incident occurred).” [1]

Festejo also sent a letter to the Manager of the Bahia Rooftop Restaurant to assure the latter that private respondents were “very valued clients” of FEBTC. William Anthony King, Food and Beverage Manager of the Intercontinental Manila, wrote back to say that the credibility of private respondent had never been “in question.” A copy of this reply was sent to Luis by Festejo.

Still evidently feeling aggrieved, private respondents, on 05 December 1988, filed a complaint for damages with the Regional Trial Court (“RTC”) of Pasig against FEBTC.

On 30 March 1990, the RTC of Pasig, given the foregoing factual settings, rendered a decision ordering FEBTC to pay private respondents (a) P300,000.00 moral damages; (b) P50,000.00 exemplary damages; and (c) P20,000.00 attorney's fees.

On appeal to the Court of Appeals, the appellate court affirmed the decision of the trial court.

Its motion for reconsideration having been denied by the appellate court, FEBTC has come to this Court with this petition for review.

There is merit in this appeal.

In culpa contractual, moral damages may be recovered where the defendant is shown to have acted in bad faith or with malice in the breach of the contract. [2] The Civil Code provides:

“Art. 2220. 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. (Underscoring supplied.)

Bad faith, in this context, includes gross, but not simple, negligence. [3] Exceptionally, in a contract of carriage, moral damages are also allowed in case of death of a passenger attributable to the fault (which is presumed [4]) of the common carrier. [5]

Concededly, the bank was remiss in indeed neglecting to personally inform Luis of his own card's cancellation. Nothing in the findings of the trial court and the appellate court, however, can sufficiently indicate any deliberate intent on the part of FEBTC to cause harm to private respondents. Neither could FEBTC's negligence in failing to give personal notice to Luis be considered so gross as to amount to malice or bad faith.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will. [6]

We are not unaware of the previous rulings of this Court, such as in *American Express International, Inc., vs. Intermediate Appellate Court* (167 SCRA 209) and *Bank of Philippine Islands vs. Intermediate Appellate Court* (206 SCRA 408), sanctioning the application of Article 21, in relation to Article 2217 and Article 2219 [7] of the Civil Code to a contractual breach similar to the case at bench. Article 21 states:

“Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.”

Article 21 of the Code, it should be observed, contemplates a conscious act to cause harm. Thus, even if we are to assume that the provision could properly relate to a breach of contract, its application can be warranted only when the defendant's disregard of his contractual obligation is so deliberate as to approximate a degree of misconduct certainly no less worse than fraud or bad faith. Most importantly, Article 21 is a mere declaration of a general principle in human relations that clearly must, in any case, give way to the specific provision of Article 2220 of the Civil Code authorizing the grant of moral damages in culpa contractual solely when the breach is due to fraud or bad faith.

Mr. Justice Jose B.L. Reyes, in his ponencia in *Fores vs. Miranda* [8] explained with great clarity the predominance that we should give to Article 2220 in contractual relations; we quote:

“Anent the moral damages ordered to be paid to the respondent, the same must be discarded. We have repeatedly ruled (*Cachero vs. Manila Yellow Taxicab Co. Inc.*, 101 Phil., 523; 54 Off. Gaz., [26], 6599; *Necesito, et al vs. Paras*, 104 Phil., 75; 56 Off Gaz., [23] 4023, that moral damages are not recoverable in

damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code, which provide as follows:

“ART. 2219. Moral damages may be recovered in the following and analogous cases:

‘(1) A criminal offense resulting in physical injuries;

‘(2) Quasi-delicts causing physical injuries;

x x x

‘ART. 2220. 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.’

“By contrasting the provisions of these two articles it immediately becomes apparent that:

“(a) In case of breach of contract (including one of transportation) proof of bad faith or fraud (dolus), i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages; and

“(b) That a breach of contract can not be considered included in the descriptive term ‘analogous cases’ used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code expressly excludes the cases where there is a ‘preexisting contractual relation between the parties.’

“ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.’

“The exception to the basic rule of damages now under consideration is a mishap resulting in the death of a passenger, in which case Article 1764 makes the common carrier expressly subject to the rule of Art. 2206, that entitles the spouse, descendants and ascendants of the deceased passenger to ‘demand moral damages for mental anguish by reason of the death of the deceased’ (Necesito vs. Paras, 104 Phil., 84, Resolution on motion to reconsider, September 11, 1958). But the exceptional rule of Art. 1764 makes it all the more evident that where the injured passenger does not die, moral damages are not recoverable unless it is proved that the carrier was guilty of malice or bad faith. We think it is clear that the mere carelessness of the carrier's driver does not per se constitute or justify an inference of malice or bad faith on the part of the carrier; and in the case at bar there is no other evidence of such malice to support the award of moral damages by the Court of Appeals. To award moral damages for breach of contract, therefore, without proof of bad faith or malice on the part of the defendant, as required by Art. 2220, would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

“x x x x x x x x.

“The distinction between fraud, bad faith or malice in the sense of deliberate or wanton wrong doing and negligence (as mere carelessness) is too fundamental in our law to be ignored (Arts. 1170-1172); their consequences being clearly differentiated by the Code.

“Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

‘In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.’

“It is to be presumed, in the absence of statutory provision to the contrary, that this difference was in the mind

of the lawmakers when in Art. 2220 they limited recovery of moral damages to breaches of contract in bad faith. It is true that negligence may be occasionally so gross as to amount to malice; but that fact must be shown in evidence, and a carrier's bad faith is not to be lightly inferred from a mere finding that the contract was breached through negligence of the carrier's employees."

The Court has not in the process overlooked another rule that a quasi-delict can be the cause for breaching a contract that might thereby permit the application of applicable principles on tort [9] even where there is a pre-existing contract between the plaintiff and the defendant (Phil. Airlines vs. Court of Appeals, 106 SCRA 143; Singson vs. Bank of Phil. Islands, 23 SCRA 1117; and Air France vs. Carrascoso, 18 SCRA 155). This doctrine, unfortunately, cannot improve private respondents' case for it can aptly govern only where the act or omission complained of would constitute an actionable tort independently of the contract. The test (whether a quasi-delict can be deemed to underlie the breach of a contract) can be stated thusly: Where, without a pre-existing contract between two parties, an act or omission can nonetheless amount to an actionable tort by itself, the fact that the parties are contractually bound is no bar to the application of quasi-delict provisions to the case. Here, private respondents' damage claim is predicated solely on their contractual relationship; without such agreement, the act or omission complained of cannot by itself be held to stand as a separate cause of action or as an independent actionable tort.

The Court finds, therefore, the award of moral damages made by the court a quo, affirmed by the appellate court, to be inordinate and substantially devoid of legal basis.

Exemplary or corrective damages, in turn, are intended to serve as an example or as correction for the public good in addition to moral, temperate, liquidated or compensatory damages (Art. 2229, Civil Code; see Prudenciado vs. Alliance Transport System, 148 SCRA 440; Lopez vs. Pan American World Airways, 16 SCRA 431). In criminal offenses, exemplary damages are imposed when the crime is committed with one or more aggravating circumstances (Art. 2230, Civil Code). In quasi-delicts, such damages are granted if the defendant is shown to have been so guilty of gross negligence as to approximate malice (See Art. 2231, Civil Code; CLLC E.G. Gochangco Workers Union vs. NLRC, 161 SCRA 655; Globe Mackay Cable and Radio Corp. vs. CA, 176 SCRA 778. In contracts and quasi-contracts, the court may award exemplary damages if the defendant is found to have acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner (Art. 2232, Civil Code; PNB vs. Gen. Acceptance and Finance Corp., 161 SCRA 449).

Given the above premises and the factual circumstances here obtaining, it would also be just as arduous to sustain the exemplary damages granted by the courts below (see De Leon vs. Court of Appeals, 165 SCRA 166).

Nevertheless, the bank's failure, even perhaps inadvertent, to honor its credit card issued to private respondent Luis should entitle him to recover a measure of damages sanctioned under Article 2221 of the Civil Code providing thusly:

"Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him."

Reasonable attorney's fees may be recovered where the court deems such recovery to be just and equitable (Art. 2208, Civil Code). We see no misuse of sound discretion on the part of the appellate court in allowing the award thereof by the trial court.

WHEREFORE, the petition for review is given due course. The appealed decision is MODIFIED by deleting the award of moral and exemplary damages to private respondents; in its stead, petitioner is ordered to pay private respondent Luis A. Luna an amount of P5,000.00 by way of nominal damages. In all other respects, the appealed

decision is AFFIRMED. No costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] Rollo, p. 52.

[2] *Necesito vs. Paras*, 104 Phil. 75; *Panay Electric Co. vs. CA*, 119 scra 456; *Sweet Lines, Inc. vs. CA*, 121 SCRA 769; *Rex Taxicab Co., Inc. vs. Bautista*, 109 Phil. 712.

[3] *Philippine Airlines vs. Court of Appeals*, 106 SCRA 143.

[4] Art. 1756, Civil Code.

[5] Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with the Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

[6] See *Luzon Brokerage, Co., Inc. vs. Maritime Building, Co., Inc.*, 43 SCRA 93; also *Black's Law Dictionary*.

[7] Art. 2217. 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 for omission.

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

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts 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 article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring action mentioned in No. 9 of this article, in the order named.

[8] 105 Phil. 266, 273-276.

[9] In culpa aquiliana, moral damages may be recovered when the act or omission complained of causes physical injuries or where the defendant is guilty of intentional tort (Article 2219 [2][10], Civil Code).

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