

**DMPI EMPLOYEES CREDIT COOPERATIVE, INC., (DMPI-ECCI),
PETITIONER, VS. HON. ALEJANDRO M. VELEZ, AS PRESIDING JUDGE
OF THE RTC, MISAMIS ORIENTAL, BR. 20, AND ERIBERTA VILLEGAS,
RE...**

G.R. No. 129282. November 29, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

In this special civil action for certiorari, petitioner DMPI Employees Credit Cooperative, Inc. (DMPI-ECCI) seeks the annulment of the order[1] of the Regional Trial Court, Misamis Oriental, Branch 20, granting the motion for reconsideration of respondent Eriberta Villegas, and thus reversing the previous dismissal of Civil Case No. CV-94-214.

The Facts

On February 18, 1994, the prosecuting attorney filed with the Regional Trial Court, Misamis Oriental, Branch 37, an information for estafa[2] against Carmen Mandawe for alleged failure to account to respondent Eriberta Villegas the amount of P608,532.46. Respondent Villegas entrusted this amount to Carmen Mandawe, an employee of petitioner DMPI-ECCI, for deposit with the teller of petitioner.

Subsequently, on March 29, 1994, respondent Eriberta Villegas filed with the Regional Trial Court, Misamis Oriental, Branch 20, a complaint[3] against Carmen Mandawe and petitioner DMPI-ECCI for a sum of money and damages with preliminary attachment arising out of the same transaction. In time, petitioner sought the dismissal of the civil case on the following grounds: (1) that there is a pending criminal case in RTC Branch 37, arising from the same facts, and (2) that the complaint failed to contain a certification against forum shopping as required by Supreme Court Circular No. 28-91.[4]

On December 12, 1996, the trial court issued an order[5] dismissing Civil Case No. CV-94-214. On January 21, 1997, respondent filed a motion for reconsideration[6] of the order.

On February 21, 1997, the trial court issued an order[7] granting respondent's motion for reconsideration, thereby recalling the dismissal of the case.

Hence, this petition.[8]

The Issues

The issues raised are: (1) whether the plaintiff's failure to attach a certification against forum shopping in the complaint is a ground to dismiss the case;[9] and, (2) whether the civil case could proceed independently of the

criminal case for estafa without having reserved the filing of the civil action.

The Court's Ruling

On the first issue, Circular No. 28-91[10] of the Supreme Court requires a certificate of non-forum shopping to be attached to petitions filed before the Supreme Court and the Court of Appeals. This circular was revised on February 8, 1994[11] by extending the requirement to all initiatory pleadings filed in all courts and quasi-judicial agencies other than the Supreme Court and the Court of Appeals.

Respondent Villegas' failure to attach a certificate of non-forum shopping in her complaint did not violate Circular No. 28-91, because at the time of filing, the requirement applied only to petitions filed with the Supreme Court and the Court of Appeals.[12] Likewise, Administrative Circular No. 04-94 is inapplicable for the reason that the complaint was filed on March 29, 1994, three days before April 1, 1994, the date of effectivity of the circular.[13]

On the second issue, as a general rule, an offense causes two (2) classes of injuries. The first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity which is civil in nature.[14]

Thus, "every person criminally liable for a felony is also civilly liable." [15] This is the law governing the recovery of civil liability arising from the commission of an offense. Civil liability includes restitution, reparation for damage caused, and indemnification of consequential damages.[16]

The offended party may prove the civil liability of an accused arising from the commission of the offense in the criminal case since the civil action is either deemed instituted with the criminal action or is separately instituted.

Rule 111, Section 1 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000, provides that:

"(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action."
[Emphasis supplied]

Rule 111, Section 2 further provides that -

"After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action." [Emphasis supplied]

However, with respect to civil actions for recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission, the rule has been changed.

Under the present rule, only the civil liability arising from the offense charged is deemed instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.[17]

There is no more need for a reservation of the right to file the independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines. "The reservation and waiver referred to refers only to the civil action for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately even without a reservation." [18]

Rule 111, Section 3 reads:

"Sec. 3. When civil action may proceed independently. - In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action."

The changes in the Revised Rules on Criminal Procedure pertaining to independent civil actions which became effective on December 1, 2000 are applicable to this case.

Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage. There are no vested rights in the rules of procedure.[19]

Thus, Civil Case No. CV-94-214, an independent civil action for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, may proceed independently even if there was no reservation as to its filing.

The Fallo

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the order dated February 21, 1997.[20]

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In Civil Case No. CV-94-214.

[2] Petition, Annex "D", Rollo, p. 21.

[3] Petition, Annex "E", Rollo, pp. 23-27.

[4] Petition, Annexes "F" and "H", Rollo, pp. 28-33 and pp. 37-41.

[5] Petition, Annex "J", Rollo, pp. 45-46.

[6] Petition, Annex "K", Rollo, pp. 47-48.

[7] Petition, Annex "A", Rollo, pp. 14-16.

[8] Petition, Rollo, pp. 1-13. On January 31, 2000, we gave due course to the petition (Rollo, pp. 102-103).

[9] Civil Case No. CV-94-214.

[10] Re: "Additional Requisites for Petitions filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints." (Dated September 4, 1991 but took effect on January 1, 1992).

[11] By Administrative Circular No. 04-94, which took effect on April 1, 1994.

[12] *Benguet Electric Cooperative v. Flores*, 350 Phil. 889, 896 (1998), citing *Gabionza v. Court of Appeals*, 234 SCRA 192, 196 (1994) and *Cadalin v. POEA Administrator*, 238 SCRA 721, 770 (1994).

[13] *Benguet Electric Cooperative v. Flores*, 350 Phil. 889, 897 (1998).

[14] Ramos v. Gonong, 72 SCRA 559, (1976), citing Guevarra, Commentaries on the Revised Penal Code, 5[th] Ed., p. 159.

[15] Article 100, Revised Penal Code.

[16] Article 104, Revised Penal Code.

[17] Justice Oscar M. Herrera (Ret.), "Treatise on Criminal Procedure: Salient Changes in the Revised Rules on Criminal Procedure (Rules 110-127, Revised Rules of Court)" (2001), p. 44.

[18] Supra, Note 17, pp. 44-45.

[19] Pfizer Inc. v. Galan, G. R. No. 143389, May 25, 2001.

[20] In Civil Case No CV-94-214 of the Regional Trial Court, Misamis Oriental, Branch 20.

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