

DEOGRACIAS F. MALONZO, PETITIONER, VS. GREGORIA T. GALANG AND FRANCISCO GALANG, RESPONDENTS.*G.R. No. 13851. July 27, 1960*

Ponente: REYES, J.B.L., J.

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On October 5, 1946, Gregoria T. Galang, wife of Francisco G. Galang, received from Deogracias T. Malonzo a loan of P5,000.00 under a check which Gregoria cashed at the drawee bank National City Bank of New York, Manila.

Subsequently, on April 17, 1947, the Rehabilitation Finance Corporation loaned to Francisco G. Galang a check in the sum of P14,968.00 drawn against the Philippine National Bank, Galang endorsed the check to Deogracias F. Malonzo, who cashed it on April 25, 1947. Out of the proceeds of the check, P10,000.00 was applied to the payment of the share and participation of Francisco Galang in a fishing venture with Malonzo. The balance of P4,968.00, together with P32.00 delivered in cash to Malonzo, paid off, according to Galang, the loan of P5,000.00 extended by the former to Galang's wife on October 5, 1946. However, Malonzo alleged that he returned said of P4,968.00 to Galang, partly in cash (P1,000.00) and partly in a check for P3,968.00 dated May 19, 1947, made payable to Gregoria T. Galang and drawn against the Philippine Trust Co.

Claiming that the P5,000.00 loan obtained from him by Gregoria T. Galang on October 5, 1946, had remained unpaid, Malonzo sued the Galang spouses on August 27, 1955 for tile payment thereof, plus interests and attorney's fees (C.C. No. 27303, CFI of Manila).

The trial court refused to believe Malonzo's version that the loan in question had not yet been paid: held that the same had already been liquidated as claimed by the defendant spouses; and found that the check for P3,968 delivered by Malonzo to Gregorio T. Galang on May 19, 1947 had nothing to do with said loan and was in payment of another loan which she extended to Malonzo just a few days before the check was issued. The lower court also found that the complaint was clearly unfounded, dismissed the same, and sentenced Malonzo to pay the Galang spouses, under their counterclaim P500.00 compensatory and moral damages, and P1,000.00 attorney's fees.

On appeal to the Court of Appeals by Malonzo, the judgment of the court a quo was affirmed in toto. From this decision, Malonzo appealed to this Court, urging that there was no legal basis for the award to respondents of compensatory and moral damages, and of attorney's fees.

As to attorney's fees, the award is correct and proper, in view of the finding of the trial court and of the Court of Appeals that petitioner's action against respondents is clearly unfounded, since Article 2208, par. (4), of the New Civil Code authorizes the recovery of attorney's fees "in case of a clearly unfounded civil action or proceeding against the plaintiff". This provision applies equally in favor of a defendant under a counterclaim for attorney's fees (as in this case), considering that a counterclaim is a complaint by the defendant against the original plaintiff (Pongos vs. Hidalgo Enterprises, Inc., et. al., 84 Phil., 499; 47 Off. Gaz., [2] 733), wherein the defendant is the

plaintiff and the original plaintiff the defendant.

In regard to other items of compensatory damages supposedly suffered by respondents (i. e., in addition to attorney's fees and costs that are also included in the concept of actual or compensatory damages): assuming that they are recoverable in this case under the theory that petitioner's having filed a clearly unfounded suit against respondents constitutes a tort against the latter that makes the former "liable for all damages which are the natural and probable consequences of the act or omission complained of" (Art. 2202, New Code), these damages can not, however be presumed, but must be duly proved (Art. 2199). Neither the trial court nor the Court of Appeals has pointed out any specific facts which afford a basis for measuring whatever compensatory or actual damages over and above attorney's fees and costs that respondents had suffered. Upon the other hand, the award of compensatory damages to respondents was merged by the trial court in a round sum (P500.00) that also included moral damages, showing that this amount was not what respondents had proved to have suffered, but simply what the court believed to be reasonably due to them for having been made to defend what the two courts found to be a clearly unfounded suit. For this reason, we do not think the award of compensatory damages to respondents should be allowed.

Finally, with respect to moral damages, we are inclined to agree with petitioner that these damages are not recoverable herein, notwithstanding the finding of the trial court and the Court of Appeals that his complaint against respondents was clearly unfounded or unreasonable. It will be observed that unlike compensatory or actual damages which are generally recoverable in tort cases as long as there is satisfactory proof thereof (Art. 2202), the Code has chosen to enumerate the cases in which moral damages may be recovered (Art. 2219). A like enumeration is made in regard to the recovery of attorney's fees as an item of damage (Art. 2208). But the two enumerations differ in the case of a clearly unfounded suit, which is expressly mentioned in Art. 2208 (par. 4), as justifying for award of attorney's fees, but is not included in the enumeration of Art. 2219 in respect to moral damages. It is true that Art. 2219 also provides that moral damages may be awarded in "analogous cases" to those enumerated, but we do not think the Code intended "a clearly unfounded civil action or proceedings" to be one of these analogous cases wherein moral damages may be recovered, or it would have expressly mentioned it in Art. 2219, as it did in Art. 2208; or else incorporated Art. 2208 by reference in Art. 2219. Besides, Art. 2219 specifically mentions "quasi-delicts causing physical injuries", as an instance when moral damages may be allowed, thereby implying that all other quasi-delicts not resulting in physical injuries are excluded (*Strebel vs. Figueras*, 96 Phil., 321), excepting, of course, the special torts referred to in Art. 309 (par. 9, Art. 2219) and in Arts. 21, 26, 27, 28, 29, 30, 32, 34 and 35 on the chapter on human relations (par. 10, Art. 2219).

Furthermore, while no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court (Art. 2216), it is, nevertheless, essential that the claimant satisfactorily prove the existence of the factual basis of the damage (Art. 2217) and its causal relation to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer (*Algara vs. Sandejas*, 27 Phil., 284). The trial court and the Court of Appeals both seem to be of the opinion that the mere fact that respondent, were sued without any legal foundation entitled them to an award of moral damages, hence they made no definite finding as to what the supposed moral damages suffered consist of. Such a conclusion would make of moral damages a penalty, which they are not, rather than a compensation for actual injury suffered, which they are intended to be. Moral damages, in other words, are not corrective or exemplary damages.

The foregoing discussion makes it unnecessary to further dwell on the other points raised by the appeal.

Wherefore, the decision appealed from is modified in the sense that the award of compensatory and moral

damages to respondents is eliminated, but is affirmed in all other respects. No costs.

Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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