KAORU TOKUDA AND ROSALINA S. TOKUDA, ISABELITA RANA, LORNA LIRA AND ALIAS “JOHN DOE” AND “PETER DOE”, PETITIONERS, VS. MILAGROS GONZALES AND MANILA ASIA TRAVEL SERVICE CORPORATI...

G.R. NO. 139628. May 05, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 48455 affirming the Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 63, in Civil Case No. 89-4485. The RTC Decision declared permanent the writ of preliminary injunction against herein petitioners and ordered the latter to pay damages.

The facts, as found by the RTC and the Court of Appeals, are as follows.

Respondent Manila Asia Travel Service Corporation ("travel agency" for brevity) is a domestic corporation engaged in selling, arranging, or furnishing information about the transportation or travel of persons. Respondent Milagros Gonzales is its president and manager.

Sometime in 1989, Gonzales assigned her subscription in the travel agency to herein petitioners, spouses Kaoru Tokuda and Rosalina Tokuda. The assignment consisted of 1,500 shares of stocks at P200 par value, for a total of P300,000. The amount of P115,500 was immediately payable, while the balance of P184,500 was payable within the next 90 days.

When Kaoru Tokuda was elected vice-president of the travel agency following the aforesaid assignment of shares, the agency transferred its office to the business place of the Tokudas and subleased a 30-square meter vacant portion of the Tokudas' office space.

The initial payment of P115,500 was thus roughly broken down as follows: P96,000 as office rental for one year; P11,825.20 as office improvement expenses; P2,000 as paint expenses; P5,000 as partial payment for printing press; and P354.50 as representation expenses.

The controversy started when Mrs. Tokuda and her co-petitioners, Isabelita Rana and Lorna Lira, complained to respondent Gonzales and to the employees of respondent Manila Asia Travel Service Corporation of the alleged delay in the passport application of one Rosemarie Adlaon. The next day, Mrs. Tokuda turned off respondents' office lights and locked the door leading to the toilet and water facilities. Subsequently, respondents' telephone extension was also disconnected and the telephone units were sequestered. The office sign and posters were likewise removed and the main door to respondents' office was padlocked.

Thus, respondents filed against the Tokuda spouses, Isabelita Rana, Lorna Lira, and two John Does a complaint for damages, and injunction with prayer for the issuance of preliminary prohibitory injunction or preliminary

mandatory injunction and/or restraining order.

After trial on the merits, the trial court ruled in favor of respondents, to wit:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs as against defendants, as follows:
>
> - The writ of preliminary mandatory injunction dated September 21, 1989 is declared PERMANENT;
>
> - Ordering defendants, jointly and severally, to pay plaintiffs the sum of P30,000.00, representing the value of the sign board, typewriter and other office items taken by the defendants;
>
> - Ordering defendants, jointly and severally, to pay plaintiffs the amount of P30,000.00, representing the unearned income of plaintiffs, from July 3 to July 8, 1989, plus the legal rate of interest per annum from July 10, 1989, until fully paid;
>
> - Ordering defendants, jointly and severally, to pay plaintiffs the amount of P100,000.00 as moral damages;
>
> - Ordering defendants, jointly and severally, to pay plaintiffs the sum of P50,000.00 as exemplary damages;
>
> - Ordering defendants, jointly and severally, to pay plaintiffs the sum of P50,000.00 as attorney's fees; and,
>
> - Ordering defendants, jointly and severally, to pay the costs of suit.
>
> SO ORDERED.[4]

Aggrieved, petitioners appealed to the Court of Appeals. The appellate court, however, affirmed the factual findings and conclusions of the trial court. Hence, the instant petition anchored on the following grounds:

> - THE COURT OF APPEALS DECIDE[D] A QUESTION OF SUBSTANCE AND OF CRUCIAL IMPORTANCE IN A MANNER NOT IN ACCORD WITH LAW, WHEN IT HELD THAT THE ASSIGNMENT OF SHARES IS (sic) CONFIRMED BY AFFIDAVIT DATED APRIL 28, 1989 (EXHIBIT "C"), IS NOT WITHOUT A DISPUTE.
>
> - THE COURT OF APPEALS DID NOT ACT IN CONSONANCE WITH THE LAW, WHEN IT GAVE CREDENCE TO THE SUPPOSED ACTS OF HARRASSMENT AND AWARDED DAMAGES.
>
> - THE COURT OF APPEALS DID NOT ACT IN ACCORDANCE WITH THE LAW, WHEN IT DISREGARDED THAT THE PETITIONERS WERE DENIED OF THEIR DAY IN COURT, THE REGIONAL TRIAL COURT.[5]

Petitioners question before this Court the assignment to them of 1,500 shares of stocks in the travel agency. They point to the testimonies of petitioner Rosalina Tokuda, that she did not agree to the said assignment of shares, and of her lawyer, Atty. Romeo Gutierrez, that the said assignment did not contain the conformity of the Tokuda spouses. Petitioners likewise deny having subleased the office premises to respondents, quickly pointing out that subleasing is prohibited in their lease contract with the building owner. Petitioners also contend that the supposed acts of harassment were offshoots of perfectly legitimate acts done at the main office. The disconnection of respondents' telephone line, petitioners maintain, was a valid action of the telephone company after it discovered the illegal connection. Finally, petitioners allege they were denied their day in court when the case was submitted for decision for their failure to appear in the July 6, 1992 hearing. They claim they are entitled to a new trial because the RTC decision is against the law.

Respondents, on the other hand, counter that the petition should be denied outright as the issues raised by petitioners are factual in nature. At any rate, respondents argue that the assignment of 1,500 shares to petitioners was confirmed in petitioners' affidavit and was duly evidenced by receipts. Respondents point out that said affidavit and receipts were both presented during trial. Also, respondents call our attention to petitioners' failure to

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present the contract of lease with the building owner to support their claim that subleasing in their building is prohibited. In any case, any such prohibition, respondents claim, cannot shield petitioners from the effects of their own violation. Finally, respondents contend that petitioners had slept on their claimed right to a day in court and thus, can no longer invoke it for the first time on appeal.

After carefully weighing the parties' submissions, we resolve to deny the petition.

We note at the outset that the first and second issues raised by petitioners are factual in nature. Whether there was indeed an assignment of shares by respondents to petitioners is a question of fact. Whether petitioners engaged in acts of harassment against respondents entitling the latter to damages, is also a question of fact. These factual issues have been exhaustively discussed and convincingly ruled upon by both the RTC and the Court of Appeals.

The reliance by the courts a quo on the notarized deed of assignment of shares, as confirmed by petitioners' own affidavit that they in fact became stockholders of the travel agency, is correct. That there was indeed an assignment of shares is further supported by receipts adduced during trial. Such definitive documentary evidence must prevail over petitioners' bare denial.

We also agree that petitioners' acts of turning off respondents' office lights and locking the door leading to respondents' toilet and water facilities could not have been legitimate acts done at the main office. These malicious acts clearly show petitioners' intention to harass respondents. Such utterly reprehensible conduct has no place in a civil society like ours. The courts a quo are justified in ordering petitioners to indemnify respondents for consequential damages suffered.

Time and again we have said that reviews on certiorari are limited to errors of law. Unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous, this Court will not analyze or weigh evidence all over again.[6] In this particular case, the factual findings and conclusions of the Court of Appeals, affirming those of the trial court, are supported by evidence on record and are thus conclusive upon this Court.

We now come to the third issue.

The RTC deemed the case submitted for decision due to the parties' failure to appear for the July 6, 1992 hearing despite due notice. Petitioners received the notice of the order submitting the case for decision on July 17, 1992. However, they did not question the said order before the RTC. It is now too late in the day to raise the said issue for the first time before this Court. Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal.[7] Matters, theories or arguments not submitted before the trial court cannot be considered for the first time on appeal or certiorari.[8]

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 48455, which upheld the Decision of the Regional Trial Court of Makati City, Branch 63, in Civil Case No. 89-4485, are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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* Also referred to as Raña in some parts of the rollo.

[1]Rollo, pp. 32-41. Penned by Associate Justice Consuelo Ynares-Santiago (now a member of this Court), with

Associate Justices B.A Adefuin-De La Cruz, and Presbitero J. Velasco, Jr. (now a member of this Court) concurring.

[2]Id. at 43.

[3] Id. at 44-53.

[4]Id. at 52-53.

[5]Id. at 87.

[6] Quezon City Government v. Dacara, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 251.

[7] Department of Agrarian Reform v. Franco, G.R. No. 147479, September 26, 2005, 471 SCRA 74, 93.

[8]Supra, note 6 at 253.

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