

WILLIAM R. BAYANI, PETITIONER, VS. PANAY ELECTRIC CO., INC., RESPONDENT.

G.R. No. 139680. April 12, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for certiorari of the decision[1] dated October 26, 1998, of the Court of Appeals in CA-G.R. SP No. 46012, which set aside the orders of the Regional Trial Court of Iloilo City, Branch 34, in Civil Case No. 23276, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts of the case are as follows:

In March 1996, private respondent, Panay Electric Company, Inc. (PECO), discontinued supplying electrical services to two pension houses the Bayani Drive Inn at Calumpang, Molo, Iloilo City and the William Bayani Hotel in Mandurriao, Iloilo City, both owned by petitioner. Alleging that it had discovered theft of electricity in petitioner's business establishments, PECO filed two complaints for violation of R.A. No. 7832[2] against petitioner with the City Prosecutor of Iloilo City. The City Prosecutor dismissed the complaints on August 8, 1996 and August 19, 1996, respectively. PECO appealed the dismissal to the Secretary of Justice.

On October 10, 1996, petitioner filed Civil Case No. 23276 with the Regional Trial Court, Iloilo City, for injunction and damages arising from malicious prosecution. PECO moved to dismiss the petition. Pending resolution of the motion to dismiss, petitioner, on January 20, 1997, amended his complaint to add a prayer for writ of preliminary prohibitory injunction to make PECO desist from making "false imputations that plaintiff allegedly continued to commit violations" of R.A. No. 7832.[3] PECO filed a motion to dismiss the amended complaint, but said motion was denied by the trial court in its order dated March 20, 1997. The court also denied its motion for reconsideration on August 27, 1997.

On September 2, 1997, the trial court granted petitioner's request for the issuance of a writ of preliminary mandatory injunction as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, let a Writ of Preliminary Mandatory Injunction issue after the plaintiff puts up a bond in the amount of Three Hundred Thousand Pesos (P300,000.00). Upon the filing of the Injunctive Bond by the plaintiff and approval of the same by the Court, the Defendant is ordered to immediately restore the electric services to the Bayani Drive Inn, Calumpang, Molo, Iloilo City and the William Bayani Hotel at Mandurriao, Iloilo City.

"SO ORDERED."[4]

Petitioner initially submitted a surety bond but later substituted a cashier's check for the surety. The trial court approved the substitution on September 10, 1997.

On September 15, 1997, PECO filed its answer with counterclaim for damages for alleged injuries done to its good name and business standing.

On November 17, 1997, PECO filed a petition, CA-G.R. SP No. 46012, for certiorari and prohibition with the Court of Appeals, praying that the appellate court declare the orders of the trial court dated March 20, 1997, August 27, 1997, September 2, 1997 and September 10, 1997 null and void. PECO likewise sought the dismissal of herein petitioner's complaint in the lower court.

The Secretary of Justice upheld the dismissal of the complaints for violations of R.A. No. 7832, on March 4, 1998.

On October 26, 1998, respondent appellate court disposed of the petition, CA-G.R. SP No. 46012, as follows:

"WHEREFORE, premises considered, the assailed orders of the public respondent dated 20 March 1997, 27 August 1997, 2 September 1997 and 10 September 1997, respectively, are hereby SET ASIDE and the complaint for injunction and damages filed by private respondent against petitioner is hereby ordered DISMISSED for lack of merit.

"SO ORDERED."[5]

On November 12, 1998, petitioner moved for reconsideration, which the appellate court denied in its resolution dated July 15, 1999.

Hence, the instant petition for review before us, with petitioner raising the following issues:

I Whether or not the Court of Appeals erred in dismissing Civil Case No. 23276 filed by petitioner against respondent in ruling that said case is based on malicious prosecution, the element of final termination of the action resulting in acquittal is absent and therefore premature?

II Whether or not the Court of Appeals erred in ruling that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the orders appealed from, as well as the subsequent orders dated 2 September 1997 and 10 September 1997 granting the issuance of a writ of Preliminary Mandatory Injunction and admitting the cashier's check in the amount of P300,000.00 as substitute for the surety bond earlier submitted as injunctive bond?

III. Whether or not the Court of Appeals erred in ruling that the period to assail the order denying the motion to dismiss filed by respondent has long expired so the latter has already lost the right to question the same and had already submitted to the jurisdiction of the Regional Trial Court when it filed its Answer with Counterclaim to join the issues raised, when it proceeded to cross-examine the witnesses of the petitioner and presented its evidence to prove his defenses and causes of action?

Notwithstanding petitioner's formulation of the issues, the pertinent issues in this case now are:

(1) Is Civil Case No. 23276 a case based on malicious prosecution?

(2) Was Civil Case No. 23276 prematurely filed with the Regional Trial Court?

Petitioner faults respondent court for finding that his complaint in Civil Case No. 23276 was one for malicious prosecution. Petitioner insists that its complaint was based on other causes of action, independent from malicious prosecution. He alleged in particular, that by summarily disconnecting electrical service to petitioner's business establishments, PECO violated Articles 19[6] and 21[7] of the Civil Code.

A review of petitioner's Amended Complaint,[8] however, clearly shows that petitioner's allegations deal mainly with the criminal complaints instituted by PECO against petitioner for violating R.A. No. 7832. In addition to damages, petitioner had sought a prohibitory injunction to prohibit private respondent from making "false imputations that plaintiff allegedly continued to commit violations" of R.A. No. 7832.[9] What determines the nature of an action are the allegations in the complaint and the character of the relief sought.[10] Conformably, no

reversible error was committed by the Court of Appeals in finding that petitioner's action was one based on malicious prosecution.

There is malicious prosecution when a person directly insinuates or imputes to an innocent person the commission of a crime and the maliciously accused is compelled to defend himself in court.[11] While generally associated with unfounded criminal actions, "the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause." [12] The basis for a civil action for damages arising from malicious prosecution is found in Articles 19, 21, 29,[13] 35,[14] of the Civil Code.

The requisites for an action for damages based on malicious prosecution are: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) the prosecutor was actuated or impelled by legal malice.[15] Considering the facts in this case, we agree with the respondent appellate court that one of the elements for an action based on malicious prosecution, the element of final termination of the action resulting in an acquittal, was absent at the time petitioner filed Civil Case No. 23276. The records show that petitioner's action for injunction and damages was filed on October 10, 1996, whereas the Secretary of Justice dismissed with finality PECO's criminal complaints against herein petitioner only on March 4, 1998. Hence, Civil Case No. 23276 was prematurely filed.

WHEREFORE, the instant petition is DENIED. The assailed decision of the Court of Appeals in CA-G.R. SP No. 46012 is AFFIRMED.

This resolution, however, shall in no way prejudice re-filing of the civil case within the reglementary period.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 88-92.

[2] Otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."

[3] Rollo, p. 67.

[4] Id. at 76-77.

[5] Id. at 92.

[6] "ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."

[7] "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."

[8] Supra Note 3, at 53-69.

[9] Supra Note 3.

[10] Union Bank of the Philippines v. Court of Appeals, 290 SCRA 198, 218 (1998), citing *Cañiza v. Court of Appeals*, 268 SCRA 640 (1997); *Amigo v. Court of Appeals*, 253 SCRA 382 (1996)

[11] F.B. MIORENO, PHIL. LAW DICTIONARY 572 (3rd ed. 1988)

[12] *Esquitable Banking Corp. v. Intermediate Appellate Court*, 133 SCRA 135, 139 (1984) citing *Buchanan v. Vda. De Esteban*, 32 Phil. 363, 365 (1915)

[13] "ART. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such

action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

"If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

[14] "ART. 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious.

"If during the pendency of the civil action, an information should be presented by the prosecuting attorney, the civil action shall be suspended until the termination of the criminal proceedings."

[15] Lao v. Court of Appeals, 199 SCRA 58, 61 (1991) citing Ferrer v. Vergara, 52, O.G. 291; Inhelder Corporation v. Court of Appeals, 122 SCRA 576, 584 (1983)

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