

ERLINDA FRANCISCO, DOING BUSINESS IN THE NAME AND STYLE OF CEBU FOUNTAINHEAD BAKESHOP AND JULIANA PAMAONG, PETITIONERS, VS. RICARDO FERRER, JR., ANNETTE FERRER, ERNESTO LO AND R...

G.R. No. 142029. February 28, 2001

Ponente: PARDO, J.

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PARDO, J.:

Appeal via certiorari[1] taken by petitioners from the decision of the Court of Appeals[2] increasing the trial court's award of moral damages to Ricardo Ferrer, Jr., Annette Ferrer, Ernesto Lo and Rebecca Lo to two hundred fifty thousand pesos (P250,000.00) and awarding exemplary damages in the amount of one hundred thousand pesos (P100,000.00), in addition to the following:

- "1. The cost of the wedding cake in the amount of P3,175.00;
- "2. Attorney's fees in the amount of P10,000.00; and
- "3. Cost of litigation."

The facts, as found by the Court of Appeals,[3] are as follows:

"On November 19, 1992 Mrs. Rebecca Lo and her daughter Annette Ferrer ordered a three layered cake from Fountainhead Bakeshop, Mango Avenue Branch. It was then agreed that the wedding cake shall be delivered at 5:00 o'clock in the afternoon at the Cebu Country Club, Cebu City, stating clearly that the wedding is scheduled on December 14, 1992.

"Plaintiffs made their first deposit in the amount of P1,000.00 on November 19, 1992 and two weeks thereafter made a full payment on the remaining balance.

"On the day of the wedding, December 14, 1992, plaintiffs arrived at the Cebu Country club around 6:00 o'clock in the evening. They immediately notice the absence of the wedding cake.

"At 7:00 o'clock in the evening they made a follow-up call to Fountainhead Bakeshop and was informed that it was probably late because of the traffic.

"At 8:00 o'clock they were informed that no wedding cake will be delivered because the order slip got lost. Plaintiffs were then compelled to buy the only available cake at the Cebu Country Club which was a sans rival. Even though they felt that it was a poor substitute to a wedding cake, the cutting of the cake is always a part of the ceremony.

"At 10:00 o'clock in the evening, the wedding cake arrived but plaintiffs declined to accept it, besides their order was a three-layered cake and what was actually delivered was a two-layered one.

"Subsequently, defendant Erlinda Francisco sent a letter of apology accompanied with a P5,000.00 check, however, the same was declined by plaintiffs because they felt it was inadequate.

"Two weeks after the wedding, defendant Erlinda Francisco called Mrs. Rebecca Lo and apologized.

"Ricardo Ferrer, son-in-law of Rebecca Lo corroborated the latter's testimony, stating that two weeks after the wedding, as a result of the non-delivery of the wedding cake, Ramon Montinola, the son-in-law of Erlinda Francisco, went to Rebecca Lo's residence and offered the sum of P5,000.00 to indemnify for the damage done, but it was rejected."[4]

On March 12, 1993, respondents filed with the Regional Trial Court, Cebu City an action for breach of contract with damages against petitioners.[5]

After due trial, on May 19, 1995, the trial court rendered a decision in favor of plaintiffs [herein defendants], the dispositive portion of which reads as follows:

"THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the plaintiffs and against Erlinda Francisco.

"Directing the latter to pay the former the following:

"1. The cost of the wedding cake in the amount of P3,175.00;

"2. Moral damages in the amount of P30,000.00;

"3. Attorney's fees in the amount of P10,000.00; and

"4. Cost of litigation.

"SO ORDERED."[6]

On May 25, 1995, petitioners appealed to the Court of Appeals.[7]

After due proceedings, on July 05, 1999, the Court of Appeals promulgated its decision modifying the appealed decision as set out in the opening paragraph of this opinion.[8]

Hence, this appeal.[9]

The issues raised are (1) whether the Court of Appeals erred in affirming the trial court's award of moral damages and increasing the amount from thirty thousand (P30,000.00) to two hundred fifty thousand pesos (P250,000.00); and (2) whether the Court of Appeals was justified in awarding in addition to moral damages, exemplary damages of one hundred thousand pesos (P100,000.00).

Petitioners submit that the Court of Appeals and the trial court erred in awarding moral damages in favor of respondents because moral damages are recoverable in breach of contract cases only where the breach was palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.[10]

We agree. "To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive."[11]

"Under the provisions of this law,[12] in culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries."[13]

"Moral damages may be awarded in breaches of contracts where the defendant acted fraudulently or in bad faith."[14]

"Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral

obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud." [15]

In this case, "[w]e find no such fraud or bad faith." [16]

"Moral damages 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." [17]

"The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive." [18] "Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. It must be shown that the proximate cause thereof was the unlawful act or omission of the [private respondent] petitioners." [19]

"An award of moral damages would require certain conditions to be met, to wit: (1) first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) second, there must be culpable act or omission factually established; (3) third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) fourth, the award of damages is predicated on any of the cases stated in Article 2219" of the Civil Code. [21]

"It must again stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant." [22] "When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court judge" [23] or appellate court justices. [24]

In the same fashion, to warrant the award of exemplary damages, "[t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner." [25]

"The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they can not be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner." [26]

Nevertheless, the facts show that when confronted with their failure to deliver on the wedding day the wedding cake ordered and paid for, petitioners gave the lame excuse that delivery was probably delayed because of the traffic, when in truth, no cake could be delivered because the order slip got lost. For such prevarication, petitioners must be held liable for nominal damages for insensitivity, inadvertence or inattention to their customer's anxiety and need of the hour. "Nominal damages are `recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.'" [27] Nominal damages may be awarded "to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered." [28]

WHEREFORE, the Court GRANTS the petition. The Court REVERSES the decision of the Court of Appeals in CA-G. R. CV No. 50894, and in lieu thereof, sentences petitioners to pay respondents, as follows:

- The cost of the wedding cake in the amount of P3, 175.00;

- Nominal damages in the amount of P10,000.00;
- Attorney's fees in the amount of P10,000.00; and
- Costs of litigation.

No costs in this instance.

SO ORDERED.

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

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- [1] Petition for review on certiorari posted by registered mail on February 14, 2000, Rollo, pp. 3-10.
- [2] In CA-G.R. CV No. 50894, promulgated on July 05, 1999, Rollo, pp. 12-19, Demetria, J., ponente, Barcelona and Dadole, JJ., concurring.
- [3] Quoting from the narration of the trial court.
- [4] CA Decision, Rollo, pp. 13-14.
- [5] RTC Record, pp. 1-4.
- [6] RTC Record, pp. 179-187. Copy of which was received by petitioners on May 24, 1995 (Ibid., at p. 187).
- [7] RTC Record, p. 189. Docketed as CA-G.R. CV No. 50894.
- [8] Rollo, pp. 12-19.
- [9] Petition filed by registered mail posted on February 14, 2000, Rollo, pp. 3-10. On July 03, 2000, we gave due course to the petition (Rollo, pp. 50-A to 50-B).
- [10] Petition, p. 3, Rollo, p. 5.
- [11] Magat v. Court of Appeals, G.R. No. 124221, August 4, 2000; Far East Bank & Trust Company v. Court of Appeals, 311 Phil. 783 [1995].
- [12] Article 2219, Civil Code.
- [13] Expertravel & Tours, Inc. v. Court of Appeals, 309 SCRA 141, 145-146 [1999].
- [14] American Home Assurance Company v. Chua, 309 SCRA 250, 263 [1999].
- [15] Tan v. Northwest Airlines, Inc., G.R. No. 135802, March 3, 2000, citing Ford Philippines, Inc. v. Court of Appeals, 335 Phil. 1 [1997]; Llorente, Jr. v. Sandiganbayan, 287 SCRA 382 [1998].
- [16] Ibid.
- [17] ABS-CBN Broadcasting Corporation v. Court of Appeals, 301 SCRA 572, 602 [1999].
- [18] Ace Haulers Corporation v. Court of Appeals, G.R. No. 127934, August 23, 2000.
- [19] Servidad v. National Labor Relations Commission, 305 SCRA 49, 59 [1999], citing Guita v. Court of Appeals, 139 SCRA 576, 580 [1985].
- [20] Coca Cola Bottlers, Phils., Inc. v. Roque, 308 SCRA 215 [1999].

[21] *Expertravel & Tours, Inc. v. Court of Appeals*, supra, Note 13, at p. 145.

[22] *American Home Assurance Company v. Chua*, supra, Note 14, at p. 263; *Benguet Electric Cooperative, Inc. v. Court of Appeals*, 321 SCRA 524, 537 [1999]; *Singson v. Court of Appeals*, 346 Phil. 831, 845 [1997], *De la Serna v. Court of Appeals*, 233 SCRA 325, 329-330 [1994].

[23] *American Home Assurance Company v. Chua*, supra, Note 13, citing *People v. Wenceslao*, 212 SCRA 560, 569 [1992]; *Singson v. Court of Appeals*, supra, Note 22.

[24] The trial court awarded moral damages in the amount of P30,000.00. The Court of Appeals increased the award to P250,000.00, and added P100,000.00 as exemplary damages.

[25] *Cervantes v. Court of Appeals*, 304 SCRA 25, 33 [1999].

[26] *National Steel Corporation v. Regional Trial Court of Lanao del Norte, Br. 2, Iligan City*, 304 SCRA 595, 609 [1999].

[27] *Areola v. Court of Appeals*, 236 SCRA 643, 654 [1994].

[28] *Cojuangco, Jr. v. Court of Appeals*, 309 SCRA 602, 621 [1999]; *Sumalpong v. Court of Appeals*, 335 Phil. 1218, 1227 [1997].

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