

UNITED COCONUT PLANTERS BANK AND LUIS MA. ONGSIAPCO, PETITIONERS, VS. RUBEN E. BASCO, RESPONDENT.

G.R. No. 142668. August 31, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals dated March 30, 2000, affirming, with modifications, the Decision[2] of the Regional Trial Court (RTC), Makati City, Branch 146, which found the petitioner bank liable for payment of damages and attorney's fees.

The Case for the Respondent

Respondent Ruben E. Basco had been employed with the petitioner United Coconut Planters Bank (UCPB) for seventeen (17) years.[3] He was also a stockholder thereof and owned 804 common shares of stock at the par value of P1.00.[4] He likewise maintained a checking account with the bank at its Las Piñas Branch under Account No. 117-001520-6.[5] Aside from his employment with the bank, the respondent also worked as an underwriter at the United Coconut Planters Life Association (Coco Life), a subsidiary of UCPB since December, 1992.[6] The respondent also solicited insurance policies from UCPB employees.

On June 19, 1995, the respondent received a letter from the UCPB informing him of the termination of his employment with the bank for grave abuse of discretion and authority, and breach of trust in the conduct of his job as Bank Operations Manager of its Olongapo Branch. The respondent thereafter filed a complaint for illegal dismissal, non-payment of salaries, and damages against the bank in the National Labor Relations Commission (NLRC), docketed as NLRC Cases Nos. 00-09-05354-92 and 00-09-05354-93. However, the respondent still frequented the UCPB main office in Makati City to solicit insurance policies from the employees thereat. He also discussed the complaint he filed against the bank with the said employees.[7]

The respondent was also employed by All-Asia Life Insurance Company as an underwriter. At one time, the lawyers of the UCPB had an informal conference with him at the head office of the bank, during which the respondent was offered money so that the case could be amicably settled. The respondent revealed the incident to some of the bank employees.[8]

On November 15, 1995, Luis Ma. Ongsiapco, UCPB First Vice-President, Human Resource Division, issued a Memorandum to Jesus Belanio, the Vice-President of the Security Department, informing him that the respondent's employment had been terminated as of June 19, 1995, that the latter filed charges against the bank and that the case was still on-going. Ongsiapco instructed Belanio not to allow the respondent access to all bank premises.[9] Attached to the Memorandum was a passport-size picture of the respondent. The next day, the security guards on duty were directed to strictly impose the security procedure in conformity with Ongsiapco's Memorandum.[10]

On December 7, 1995, the respondent, through counsel, wrote Ongsiapco, requesting that such Memorandum be

reconsidered, and that he be allowed entry into the bank premises.[11] His counsel emphasized that –

In the meantime, we are more concerned with your denying Mr. Basco “access to all bank premises.” As you may know, he is currently connected with Cocolife as insurance agent. Given his 17-year tenure with your bank, he has established good relationships with many UCPB employees, who comprise the main source of his solicitations. In the course of his work as insurance agent, he needs free access to your bank premises, within reason, to add the unnecessary. Your memorandum has effectively curtailed his livelihood and he is once again becoming a victim of another “illegal termination,” so to speak. And Shakespeare said: “You take his life when you do take the means whereby he lives.”

Mr. Basco’s work as an insurance agent directly benefits UCPB, Cocolife’s mother company. He performs his work in your premises peacefully without causing any disruption of bank operations. To deny him access to your premises for no reason except the pendency of the labor case, the outcome of which is still in doubt – his liability, if any, certainly has not been proven – is a clear abuse of right in violation of our client’s rights. Denying him access to the bank, which is of a quasi-public nature, is an undue restriction on his freedom of movement and right to make a livelihood, comprising gross violations of his basic human rights. (This is Human Rights Week, ironically).

We understand that Mr. Basco has been a stockholder of record of 804 common shares of the capital stock of UCPB since July 1983. As such, he certainly deserves better treatment than the one he has been receiving from your office regarding property he partly owns. He is a part of corporate sovereignty. We doubt that you can impose the functional equivalent of the penalty of destierro on our client who really wishes only to keep his small place in the sun, to survive and breathe. No activity can be more legitimate than to toil for a living. Let us live and let live.[12]

In his reply dated December 12, 1995, Ongsiapco informed the respondent that his request could not be granted:

As you understand, we are a banking institution; and as such, we deal with matters involving confidences of clients. This is among the many reasons why we, as a matter of policy, do not allow non-employees to have free access to areas where our employees work. Of course, there are places where visitors may meet our officers and employees to discuss business matters; unfortunately, we have limited areas where our officers and employees can entertain non-official matters.

Furthermore, in keeping with good business practices, the Bank prohibits solicitation, peddling and selling of goods, service and other commodities within its premises as it disrupts the efficient performance and function of the employees.

Please be assured that it is farthest from our intention to discriminate against your client. In the same vein, it is highly improper for us to carve exceptions to our policies simply to accommodate your client’s business ventures.[13]

The respondent was undaunted. At 5:30 p.m. of December 21, 1995, he went to the office of Junne Cacay, the Assistant Manager of the Makati Branch. Cacay was then having a conference with Bong Braganza, an officer of the UCPB Sucat Branch. Cacay entertained the respondent although the latter did have an appointment. Cacay even informed him that he had a friend who wanted to procure an insurance policy.[14] Momentarily, a security guard of the bank approached the respondent and told him that it was already past office hours. He was also reminded not to stay longer than he should in the bank premises.[15] Cacay told the guard that the respondent would be leaving shortly.[16] The respondent was embarrassed and told Cacay that he was already leaving.[17]

At 1:30 p.m. of January 31, 1996, the respondent went to the UCPB Makati Branch to receive a check from Rene Jolo, a bank employee, and to deposit money with the bank for a friend.[18] He seated himself on a sofa fronting the teller’s booth[19] where other people were also seated.[20] Meanwhile, two security guards approached the

respondent. The guards showed him the Ongsiapco's Memorandum and told him to leave the bank premises. The respondent pleaded that he be allowed to finish his transaction before leaving. One of the security guards contacted the management and was told to allow the respondent to finish his transaction with the bank.

Momentarily, Jose Regino Casil, an employee of the bank who was in the 7th floor of the building, was asked by Rene Jolo to bring a check to the respondent, who was waiting in the lobby in front of the teller's booth.[21] Casil agreed and went down to the ground floor of the building, through the elevator. He was standing in the working area near the Automated Teller Machine (ATM) Section[22] in the ground floor when he saw the respondent standing near the sofa[23] near the two security guards.[24] He motioned the respondent to come and get the check, but the security guard tapped the respondent on the shoulder and prevented the latter from approaching Casil. The latter then walked towards the respondent and handed him the check from Jolo.

Before leaving, the respondent requested the security guard to log his presence in the logbook. The guard did as requested and the respondent's presence was recorded in the logbook.[25]

On March 11, 1996, the respondent filed a complaint for damages against the petitioners UCPB and Ongsiapco in the RTC of Manila, alleging inter alia, that –

- It is readily apparent from this exchange of correspondence that defendant bank's acknowledged reason for barring plaintiff from its premises - the pending labor case – is a mere pretense for its real vindictive and invidious intent: to prevent plaintiff, and plaintiff alone, from carrying out his trade as an insurance agent among defendant bank's employees, a practice openly and commonly allowed and tolerated (encouraged even, for some favored proverbial sacred cows) in the bank premises, now being unjustly denied to plaintiff on spurious grounds.

- Defendants, to this day, have refused to act on plaintiff's claim to be allowed even in only the "limited areas where [the bank's] officers and employees can entertain non-official matters" and have maintained the policy banning plaintiff from all bank premises. As he had dared exercised his legal right to question his dismissal, he is being penalized with a variation of destierro, available in criminal cases where the standard however, after proper hearing, is much more stringent and based on more noble grounds than mere pique or vindictiveness.

- This appallingly discriminatory policy resulted in an incident on January 31, 1996 at 1:30 p.m. at defendant bank's branch located at its head office, which caused plaintiff tremendous undeserved humiliation, embarrassment, and loss of face.[26]

...

- Defendants' memorandum and the consequent acts of defendants' security guards, together with defendant Ongsiapco's disingenuous letter of December 12, 1995, are suggestive of malice and bad faith in derogation of plaintiff's right and dignity as a human being and citizen of this country, which acts have caused him considerable undeserved embarrassment. Even if defendants, for the sake of argument, may be acting within their rights, they cannot exercise same abusively, as they must, always, act with justice and in good faith, and give plaintiff his due.[27]

The respondent prayed that, after trial, judgment be rendered in his favor, as follows:

WHEREFORE, it is respectfully prayed that judgment issue ordering defendants:

- To rescind the directive to its agents barring plaintiff from all bank premises as embodied in the memorandum of November 15, 1995, and allow plaintiff access to the premises of defendant bank, including all its branches, which are open to members of the general public, during reasonable hours, to be able to conduct lawful business without being subject to invidious discrimination; and

- To pay plaintiff P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 by way

of attorney's fees.

Plaintiff likewise prays for costs, interest, the disbursements of this action, and such other further relief as may be deemed just and equitable in the premises.[28]

In their Answer to the complaint, the petitioners interposed the following affirmative defenses:

- Plaintiff had been employed as Branch Operations Officer, Olongapo Branch, of defendant United Coconut Planters Bank.

In or about the period May to June 1992, he was, together with other fellow officers and employees, investigated by the bank in connection with various anomalies. As a result of the investigation, plaintiff was recommended terminated on findings of fraud and abuse of discretion in the performance of his work. He was found by the bank's Committee on Employee Discipline to have been guilty of committing or taking part in the commission of the following:

- Abuse of discretion in connection with actions taken beyond or outside the limits of his authority.
- Borrowing money from a bank client.
- Gross negligence or dereliction of duty in the implementation of bank policies or valid orders from management.
- Direct refusal or willful failure to perform, or delay in performing, an assigned task.
- Fraud or willful breach of trust in the conduct of his work.
- Falsification or forgery of bank records/documents.
- Plaintiff thereafter decided to contest his termination by filing an action for illegal dismissal against the bank.

Despite the pendency of this litigation, plaintiff was reported visiting employees of the bank in their place of work during work hours, and circulating false information concerning the status of his case against the bank, including alleged offers by management of a monetary settlement for his "illegal dismissal."

- Defendants acted to protect the bank's interest by preventing plaintiff's access to the bank's offices, and at the same time informing him of that decision.

Plaintiff purported to insist on seeing and talking to the bank's employees despite this decision, claiming he needed to do this in connection with his insurance solicitation activities, but the bank has not reconsidered.

- The complaint states, and plaintiff has, no cause of action against defendants.[29]

The petitioners likewise interposed compulsory counterclaims for damages.

The Case for the Petitioners

The petitioners adduced evidence that a day or so before November 15, 1995, petitioner Ongsiapco was at the 10th floor of the main office of the bank where the training room of the Management Development Training Office was located. Some of the bank's management employees were then undergoing training. The bank also kept important records in the said floor. When Ongsiapco passed by, he saw the respondent talking to some of the trainees. Ongsiapco was surprised because non-participants in the training were not supposed to be in the premises.[30] Besides, the respondent had been dismissed and had filed complaints against the bank with the NLRC. Ongsiapco was worried that bank records could be purloined and employees could be hurt.

The next day, Ongsiapco contacted the training supervisor and inquired why the respondent was in the training

room the day before. The supervisor replied that he did not know why.[31] Thus, on November 15, 1995, Ongsiapco issued a Memorandum to Belanio, the Vice-President for Security Services, directing the latter not to allow the respondent access to the bank premises near the working area.[32] The said Memorandum was circulated by the Chief of Security to the security guards and bank employees.

At about 12:30 p.m. on January 31, 1996, Security Guard Raul Caspe, a substitute for the regular guard who was on leave, noticed the respondent seated on the sofa in front of the teller's booth.[33] Caspe notified his superior of the respondent's presence, and was instructed not to confront the respondent if the latter was going to make a deposit or withdrawal.[34] Caspe was also instructed not to allow the respondent to go to the upper floors of the building.[35] The respondent went to the teller's booth and, after a while, seated himself anew on the sofa. Momentarily, Caspe noticed Casil, another employee of the bank who was at the working section of the Deposit Service Department (DSD), motioning to the respondent to get the check. The latter stood up and proceeded in the direction of Casil's workstation. After the respondent had taken about six to seven paces from the sofa, Caspe and the company guard approached him. The guards politely showed Ongsiapco's Memorandum to the respondent and told the latter that he was not allowed to enter the DSD working area; it was lunch break and no outsider was allowed in that area.[36] The respondent looked at the Memorandum and complied.

On May 29, 1998, the trial court rendered judgment in favor of the respondent. The fallo of the decision reads:

WHEREFORE, premises considered, defendants are hereby adjudged liable to plaintiff and orders them to rescind and set-aside the Memorandum of November 15, 1995 and orders them to pay plaintiff the following:

- 1) the amount of P100,000.00 as moral damages;
- 2) the amount of P50,000.00 as exemplary damages;
- 3) P50,000.00 for and as attorney's fees;
- 4) Cost of suit.

Defendants' counterclaim is dismissed for lack of merit.

SO ORDERED.[37]

The trial court held that the petitioners abused their right; hence, were liable to the respondent for damages under Article 19 of the New Civil Code.

The petitioners appealed the decision to the Court of Appeals and raised the following issues:

- 4.1 Did the appellants abuse their right when they issued the Memorandum?
- 4.2 Did the appellants abuse their right when Basco was asked to leave the bank premises, in implementation of the Memorandum, on 21 December 1995?
- 4.3. Did the appellants abuse their right when Basco was asked to leave the bank premises, in implementation of the Memorandum, on 31 January 1995?
- 4.4. Is Basco entitled to moral and exemplary damages and attorney's fees?
- 4.5. Are the appellants entitled to their counterclaim?[38]

The CA rendered a Decision on March 30, 2000, affirming the decision of the RTC with modifications. The CA deleted the awards for moral and exemplary damages, but ordered the petitioner bank to pay nominal damages on its finding that latter abused its right when its security guards stopped the respondent from proceeding to the working area near the ATM section to get the check from Casil. The decretal portion of the decision reads:

WHEREFORE, the Decision of the Regional Trial Court dated May 29, 1998 is hereby MODIFIED as

follows:

- The awards for moral and exemplary damages are deleted;
- The award for attorney's fees is deleted;
- The order rescinding Memorandum dated November 15, 1995 is set aside; and
- UCPB is ordered to pay nominal damages in the amount of P25,000.00 to plaintiff-appellee.

Costs de officio.[39]

The Present Petition

The petitioners now raise the following issues before this Court:

- Whether or not the appellate court erred when it found that UCPB excessively exercised its right to self-help to the detriment of Basco as a depositor, when on January 31, 1996, its security personnel stopped respondent from proceeding to the area restricted to UCPB's employees.
- Whether or not the appellate court erred when it ruled that respondent is entitled to nominal damages.
- Whether or not the appellate court erred when it did not award the petitioners' valid and lawful counterclaim.[40]

The core issues are the following: (a) whether or not the petitioner bank abused its right when it issued, through petitioner Ongsiapco, the Memorandum barring the respondent access to all bank premises; (b) whether or not petitioner bank is liable for nominal damages in view of the incident involving its security guard Caspe, who stopped the respondent from proceeding to the working area of the ATM section to get the check from Casil; and (c) whether or not the petitioner bank is entitled to damages on its counterclaim.

The Ruling of the Court

On the first issue, the petitioners aver that the petitioner bank has the right to prohibit the respondent from access to all bank premises under Article 429 of the New Civil Code, which provides that:

Art. 429. The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

The petitioners contend that the provision which enunciates the principle of self-help applies when there is a legitimate necessity to personally or through another, prevent not only an unlawful, actual, but also a threatened unlawful aggression or usurpation of its properties and records, and its personnel and customers/clients who are in its premises. The petitioners assert that petitioner Ongsiapco issued his Memorandum dated November 15, 1995 because the respondent had been dismissed from his employment for varied grave offenses; hence, his presence in the premises of the bank posed a threat to the integrity of its records and to the persons of its personnel. Besides, the petitioners contend, the respondent, while in the bank premises, conversed with bank employees about his complaint for illegal dismissal against the petitioner bank then pending before the Labor Arbiter, including negotiations with the petitioner bank's counsels for an amicable settlement of the said case.

The respondent, for his part, avers that Article 429 of the New Civil Code does not give to the petitioner bank the absolute right to exclude him, a stockholder and a depositor, from having access to the bank premises, absent any clear and convincing evidence that his presence therein posed an imminent threat or peril to its property and records, and the persons of its customers/clients.

We agree with the respondent bank that it has the right to exclude certain individuals from its premises or to limit their access thereto as to time, to protect, not only its premises and records, but also the persons of its personnel and its customers/clients while in the premises. After all, by its very nature, the business of the petitioner bank is so impressed with public trust; banks are mandated to exercise a higher degree of diligence in the handling of its affairs than that expected of an ordinary business enterprise.[41] Banks handle transactions involving millions of pesos and properties worth considerable sums of money. The banking business will thrive only as long as it maintains the trust and confidence of its customers/clients. Indeed, the very nature of their work, the degree of responsibility, care and trustworthiness expected of officials and employees of the bank is far greater than those of ordinary officers and employees in the other business firms.[42] Hence, no effort must be spared by banks and their officers and employees to ensure and preserve the trust and confidence of the general public and its customers/clients, as well as the integrity of its records and the safety and well being of its customers/clients while in its premises. For the said purpose, banks may impose reasonable conditions or limitations to access by non-employees to its premises and records, such as the exclusion of non-employees from the working areas for employees, even absent any imminent or actual unlawful aggression on or an invasion of its properties or usurpation thereof, provided that such limitations are not contrary to the law.[43]

It bears stressing that property rights must be considered, for many purposes, not as absolute, unrestricted dominions but as an aggregation of qualified privileges, the limits of which are prescribed by the equality of rights, and the correlation of rights and obligations necessary for the highest enjoyment of property by the entire community of proprietors.[44] Indeed, in *Rellosa vs. Pellosis*,[45] we held that:

Petitioner might verily be the owner of the land, with the right to enjoy and to exclude any person from the enjoyment and disposal thereof, but the exercise of these rights is not without limitations. The abuse of rights rule established in Article 19 of the Civil Code requires every person to act with justice, to give everyone his due; and to observe honesty and good faith. When right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable.

Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment and to such reasonable restraints established by law.[46]

In this case, the Memorandum of the petitioner Ongsiapco dated November 15, 1995, reads as follows:

MEMO TO : MR. JESUS M. BELANIO

Vice President

Security Department

D A T E : 15 November 1995

R E : MR. RUBEN E. BASCO

Please be advised that Mr. Ruben E. Basco was terminated for a cause by the Bank on 19 June 1992. He filed charges against the bank and the case is still on-going.

In view of this, he should not be allowed access to all bank premises.

(Sgd.) LUIS MA. ONGSIAPCO

First Vice President

Human Resource Division

16 November 1995

TO: ALL GUARDS

ON DUTY

Strictly adhere/impose Security Procedure RE: Admission to Bank premises.

For your compliance.

(Signature) 11/16/95

JOSE G. TORIAGA[47]

On its face, the Memorandum barred the respondent, a stockholder of the petitioner bank and one of its depositors, from gaining access to all bank premises under all circumstances. The said Memorandum is all-embracing and admits of no exceptions whatsoever. Moreover, the security guards were enjoined to strictly implement the same.

We agree that the petitioner may prohibit non-employees from entering the working area of the ATM section. However, under the said Memorandum, even if the respondent wished to go to the bank to encash a check drawn and issued to him by a depositor of the petitioner bank in payment of an obligation, or to withdraw from his account therein, or to transact business with the said bank and exercise his right as a depositor, he could not do so as he was barred from entry into the bank. Even if the respondent wanted to go to the petitioner bank to confer with the corporate secretary in connection with his shares of stock therein, he could not do so, since as stated in the Memorandum of petitioner Ongsiapco, he would not be allowed access to all the bank premises. The said Memorandum, as worded, violates the right of the respondent as a stockholder or a depositor of the petitioner bank, for being capricious and arbitrary.

The Memorandum even contravenes Article XII, paragraph 4 (4.1 and 4.2) of the Code of Ethics issued by the petitioner bank itself, which provides that one whose employment had been terminated by the petitioner bank may, nevertheless, be allowed access to bank premises, thus:

4.1 As a client of the Bank in the transaction of a regular bank-client activity.

4.2 When the offending party is on official business concerning his employment with the Bank with the prior approval and supervision of the Head of HRD or of the Division Head, or of the Branch Head in case of branches.[48]

For another, the Memorandum, as worded, is contrary to the intention of the petitioners. Evidently, the petitioners did not intend to bar the respondent from access to all bank premises under all circumstances. When he testified, petitioner Ongsiapco admitted that a bank employee whose services had been terminated may be allowed to see an employee of the bank and may be allowed access to the bank premises under certain conditions, viz:

ATTY. R. ALIKPALA

Q

SO THE PERMISSION YOU ARE REFERRING TO IS MERELY A PERMISSION TO BE GRANTED BY THE SECURITY GUARD?

A

NO, SIR, NOT THE SECURITY GUARD. THE SECURITY WILL CALL THE OFFICE WHERE THEY ARE GOING. BECAUSE THIS IS THE SAME PROCEDURE THEY DO FOR VISITORS. ANYBODY WHO WANTS TO SEE ANYBODY IN THE BANK BEFORE THEY ARE ALLOWED ACCESS OR ENTRY, THEY CALL UP THE DEPARTMENT OR THE DIVISION.

Q

SO I WANT TO CLARIFY, MR. WITNESS. FORMER BANK EMPLOYEES ARE NOT ALLOWED WITHIN THE BANK PREMISES UNTIL AFTER THE SECURITY GUARD CALL, WHICH EVER DEPARTMENT THEY ARE HEADED FOR, AND THAT THEY GIVE THE PERMISSION AND THEY TELL THE SECURITY GUARD TO ALLOW THE PERSON?

A

YES, SIR, THAT IS THE USUAL PROCEDURE.

Q

IF AN EMPLOYEE RESIGNED FROM THE BANK, SAME TREATMENT?

A

YES, SIR.

Q

IF AN EMPLOYEE WAS TERMINATED BY THE BANK FOR CAUSE, SAME TREATMENT?

A

YES, SIR.

Q

OUTSIDERS WHO ARE NOT EMPLOYEES OR WHO WERE NEVER EMPLOYEES OF THE BANK ALSO MUST ASK PERMISSION?

A

YES, SIR. BECAUSE THERE IS A SECURITY CONTROL AT THE LOBBY.

Q

YOU MENTIONED THAT THIS IS A GENERAL RULE?

A

YES, SIR.

Q

IS THIS RULE WRITTEN DOWN IN BLACK AND WHITE ANYWHERE?

A

I THINK THIS IS MORE OF A SECURITY PROCEDURE.

Q

BUT BEING A HUGE FINANCIAL INSTITUTION, WE EXPECT COCOBANK HAS ITS PROCEDURE WRITTEN DOWN IN BLACK AND WHITE?

ATTY. A. BATUHAN

YOUR HONOR, OBJECTION. ARGUMENTATIVE, YOUR HONOR. THERE IS NO QUESTION POSED AT ALL, YOUR HONOR.

C O U R T

ANSWER. IS THERE ANY GUIDELINE?

A

THERE MUST BE A GUIDELINE OF THE SECURITY.

Q

BUT YOU ARE NOT VERY FAMILIAR ABOUT THE SECURITY PROCEDURES?

A

YES, SIR.

ATTY. R. ALIKPALA

Q

MR. ONGSIAPCO, THE AGENCY THAT YOU HIRED FOLLOWS CERTAIN PROCEDURES?

A

YES, SIR.

Q

WHICH OF COURSE ARE UNDER THE DIRECT CONTROL AND SUPERVISION OF THE BANK?

A

YES, SIR.

Q

AND DID THE SECURITY AGENCY HAVE ANY OF THIS PROCEDURE WRITTEN DOWN?

A

IT WILL BE GIVEN TO THEM BY THE SECURITY DEPARTMENT, BECAUSE THEY ARE UNDER THE SECURITY DEPARTMENT.

Q

BUT IF AN EMPLOYEE IS ONLY ENTERING THE GROUND FLOOR BANK AREA, WHERE CUSTOMERS OF THE BANK ARE NORMALLY ALLOWED, WHETHER DEPOSITORS OR NOT, THEY DON'T NEED TO ASK FOR EXPRESS PERMISSION, IS THAT CORRECT?

A

YES, IF THEY ARE CLIENT.

Q

EVEN IF THEY ARE NOT CLIENT, BUT LET US SAY THEY HAVE TO ENCASH A CHECK PAID TO THEM BY SOMEONE?

A

HE IS A CLIENT THEN.

Q

BUT HE IS NOT YET A CLIENT WHEN HE ENTERS THE BANK PREMISES. HE ONLY BECOMES ... YOU KNOW BECAUSE YOU DO NOT ALL THESE PEOPLE, YOU DO NOT KNOW EVERY CLIENT OF THE BANK SO YOU JUST ALLOW THEM INSIDE THE BANK?

A

YES, THE PREMISES.[49]

PETITIONER ONGSIAPCO ALSO TESTIFIED THAT A FORMER EMPLOYEE WHO IS A CUSTOMER/CLIENT OF THE PETITIONER BANK ALSO HAS ACCESS TO THE BANK PREMISES, EXCEPT THOSE AREAS RESERVED FOR ITS OFFICERS AND EMPLOYEES, SUCH AS THE WORKING

AREAS:

ATTY. R. ALIKPALA

Q

SO MR. WITNESS, JUST FOR THE SAKE OF CLARITY. THE GROUND FLOOR AREA IS WHERE THE REGULAR CONSUMER BANKING SERVICES ARE HELD? WHAT DO YOU CALL THIS PORTION?

A

THAT IS THE DEPOSIT SERVICING DEPARTMENT.

Q

WHERE THE

A

WHERE THE PEOPLE TRANSACT BUSINESS.

ATTY. R. ALIKPALA

Q

THEY ARE FREELY ALLOWED IN THIS AREA?

A

YES, SIR.

Q

THIS IS THE AREA WHERE THERE ARE COUNTERS, TELLER, WHERE A PERSON WOULD NORMALLY GO TO LET US SAY OPEN A BANK ACCOUNT OR TO REQUEST FOR MANAGER'S CHECK, IS THAT CORRECT?

A

YES, SIR.

Q

SO, IN THIS PORTION, NO, I MEAN BEYOND THIS PORTION, MEANING THE WORKING AREAS AND SECOND FLOOR UP, OUTSIDERS WILL HAVE TO ASK EXPRESS PERMISSION FROM THE SECURITY GUARD?

A

YES, SIR.

Q

AND YOU SAY THAT THE SECURITY GUARDS ARE INSTRUCTED TO VERIFY THE PURPOSE OF EVERY PERSON WHO GOES INTO THIS AREA?

A

AS FAR AS I KNOW, SIR.[50]

It behooved the petitioners to revise such Memorandum to conform to its Code of Ethics and their intentions when it was issued, absent facts and circumstances that occurred pendente lite which warrant the retention of the Memorandum as presently worded.

On the second issue, the Court of Appeals ruled that the petitioner bank is liable for nominal damages to the respondent despite its finding that the petitioners had the right to issue the Memorandum. The CA ratiocinated that the petitioner bank should have allowed the respondent to walk towards the restricted area of the ATM section until they were sure that he had entered such area, and only then could the guards enforce the Memorandum of petitioner Ongsiapco. The Court of Appeals ruled that for such failure of the security guards, the petitioner bank thereby abused its right of self-help and violated the respondent's right as one of its depositors:

With respect, however, to the second incident on January 31, 1996, it appears that although according to UCPB security personnel they tried to stop plaintiff-appellee from proceeding to the stairs leading to the upper floors, which were limited to bank personnel only (TSN, pp. 6-9, June 4, 1997), the said act exposed plaintiff-appellee to humiliation considering that it was done in full view of other bank customers. UCPB security personnel should have waited until they were sure that plaintiff-appellee had entered the restricted areas and then implemented the memorandum order by asking him to leave the premises. Technically, plaintiff-appellee was still in the depositing area when UCPB security personnel approached him. In this case, UCPB's exercise of its right to self-help was in excess and abusive to the detriment of the right of plaintiff-appellee as depositor of said Bank, hence, warranting the award of nominal damages in favor of plaintiff-appellee. Nominal damages are adjudicated in order that a right of a plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying any loss suffered by him (Japan Airlines vs. Court of Appeals, 294 SCRA 19).[51]

The petitioners contend that the respondent is not entitled to nominal damages and that the appellate court erred in so ruling for the following reasons: (a) the respondent failed to prove that the petitioner bank violated any of his rights; (b) the respondent did not suffer any humiliation because of the overt acts of the security guards; (c) even if the respondent did suffer humiliation, there was no breach of duty committed by the petitioner bank since its security guards politely asked the respondent not to proceed to the working area of the ATM section because they merely acted pursuant to the Memorandum of petitioner Ongsiapco, and accordingly, under Article 429 of the New Civil Code, this is a case of *damnum absque injuria*;^[52] and (d) the respondent staged the whole incident so that he could create evidence to file suit against the petitioners.

We rule in favor of the petitioners.

The evidence on record shows that Casil was in the working area of the ATM section on the ground floor when he motioned the respondent to approach him and receive the check. The respondent then stood up and walked

towards the direction of Casil. Indubitably, the respondent was set to enter the working area, where non-employees were prohibited entry; from there, the respondent could go up to the upper floors of the bank's premises through the elevator or the stairway. Caspe and the company guard had no other recourse but prevent the respondent from going to and entering such working area. The security guards need not have waited for the respondent to actually commence entering the working area before stopping the latter. Indeed, it would have been more embarrassing for the respondent to have started walking to the working area only to be halted by two uniformed security guards and disallowed entry, in full view of bank customers. It bears stressing that the security guards were polite to the respondent and even apologized for any inconvenience caused him. The respondent could have just motioned to Casil to give him the check at the lobby near the teller's booth, instead of proceeding to and entering the working area himself, which the respondent knew to be an area off-limits to non-employees. He did not.

The respondent failed to adduce evidence other than his testimony that people in the ground floor of the petitioner bank saw him being stopped from proceeding to the working area of the bank. Evidently, the respondent did not suffer embarrassment, inconvenience or discomfort which, however, partakes of the nature of *damnum absque injuria*, i.e. damage without injury or damage inflicted without injustice, or loss or damage without violation of legal rights, or a wrong due to a pain for which the law provides no remedy.[53] Hence, the award of nominal damages by the Court of Appeals should be deleted.

On the third issue, we now hold that the petitioner bank is not entitled to damages and attorney's fees as its counterclaim. There is no evidence on record that the respondent acted in bad faith or with malice in filing his complaint against the petitioners. Well-settled is the rule that the commencement of an action does not per se make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate.

We reiterate case law that if damages result from a party's exercise of a right, it is *damnum absque injuria*.[54]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision of the Court of Appeals is REVERSED and SET ASIDE. The complaint of the respondent in the trial court and the counterclaims of the petitioners are DISMISSED.

No costs.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Justice Salome M. Montoya (retired), with Associate Justices Bernardo L.I. Salas (retired) and Presbitero J. Velasco (now SC Court Administrator), concurring.

[2] Penned by Judge Salvador S. Tensuan.

[3] TSN, 26 February 1997, p. 5.

[4] Exhibits "I" to "I-3;" Records, pp. 122-123.

[5] Exhibit "H;" Id. at 121.

[6] TSN, 26 February 1997, p. 4.

- [7] TSN, 5, March 1997, p. 9.
- [8] TSN, 5 March 1997, pp. 9-10.
- [9] Exhibit "C;" Records, p. 114
- [10] Ibid. (bottom portion).
- [11] Exhibit "D;" Records, pp. 115-116.
- [12] Idem, supra.
- [13] Exhibit "7;" Records, p. 118.
- [14] TSN, 19 March 1995, p. 5.
- [15] Ibid.
- [16] TSN, 26 February 1997, p. 5.
- [17] TSN, 19 March 1997, p. 6.
- [18] TSN, 26 February 1997, p. 15; TSN, 5 March 1997, p. 16.
- [19] Exhibits "K-3," "K-5" & "K-6;" Records, p. 125.
- [20] Exhibit "K-7;" Id.
- [21] TSN, 19 March 1997, p. 12.
- [22] Exhibit "K-2;" Records, p. 125.
- [23] Exhibit "K-1;" Id.
- [24] Exhibit "K-3;" Id.
- [25] Exhibit "E-1;" Id. at 117.
- [26] Records, p. 4.
- [27] Id. at 5.
- [28] Id. at 6.
- [29] Records, pp. 22-23.
- [30] TSN, 4 June 1997, pp. 20-24.
- [31] Id. at 37.
- [32] TSN, 4 June 1995, p. 42.
- [33] Id. at 3-4.
- [34] Id. at 5.
- [35] TSN, 4 June 1997, p. 5.
- [36] Ibid.
- [37] Records, pp. 294-295.

[38] CA Rollo, p. 29.

[39] Rollo, pp. 48-49.

[40] Id. at 29.

[41] Lim Sio Bio vs. Court of Appeals, 221 SCRA 307 (1993).

[42] Philippine Commercial and International Bank vs. Court of Appeals, 350 SCRA 446 (2001).

[43] Tolentino, New Civil Code of the Philippines, 1987 Ed., p. 88.

[44] 63 American Jurisprudence 2d. Property, p. 97.

[45] 362 SCRA 486 (2001).

[46] State of Washington vs. Dexter, 13 ALR 20, p. 108IC (1949), citing Story of the Constitution, Section 1984, Volume 2, 5[th] Ed.

[47] Exhibit "C," Records, p. 114.

[48] Exhibit "12;" Records, p. 213.

[49] TSN, 4 June 1997, pp. 28-31.

[50] TSN, 4 June 1997, pp. 28-32.

[51] Rollo, p. 47.

[52] Ibid.

[53] Atlas Banking Corporation vs. Williams, 361 SCRA 446 (2001).

[54] ABS-CBN Broadcasting Corporation vs. Court of Appeals, 301 SCRA 572 (1999).

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