

**PHILIPPINE JOURNALISTS, INC. (PEOPLE'S JOURNAL),
ZACARIAS NUGUID, JR. AND CRISTINA LEE, PETITIONERS, VS.
FRANCIS THOENEN, RESPONDENT.**

G.R. NO. 143372. December 13, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For almost a century, this Court has sought that elusive equilibrium between the law on defamation on one hand, and the constitutionally guaranteed freedoms of speech and press on the other. This case revisits that search.

On 30 September 1990, the following news item appeared in the People's Journal, a tabloid of general circulation:

Swiss Shoots Neighbors' Pets

RESIDENTS of a subdivision in Parañaque have asked the Bureau of Immigration to deport a Swiss who allegedly shoots wayward neighbors' pets that he finds in his domain.

The BF Homes residents through lawyer Atty. Efren Angara complained that the deportation of Francis Thoenen, of 10 Calcutta BF Homes Phase III, could help "prevent the recurrence of such incident in the future."

Angara explained that house owners could not control their dogs and cats when they slip out of their dwellings unnoticed.

An alleged confrontation between Thoenen and the owner of a pet he shot recently threatens to exacerbate the problem, Angara said.

Cristina Lee[1]

The subject of this article, Francis Thoenen, is a retired engineer permanently residing in this country with his Filipina wife and their children. Claiming that the report was false and defamatory, and that the petitioners acted irresponsibly in failing to verify the truth of the same prior to publication, he filed a civil case for damages against herein petitioners Philippine Journalists, Inc., Zacarias Nuguid, Jr., its publisher, and reporter Cristina Lee.

Thoenen claimed that the article destroyed the respect and admiration he enjoyed in the community, and that since it had been published, he and his wife received several queries and angry calls from friends, neighbors and relatives. For the impairment of his reputation and standing in the community, and his mental anguish, Thoenen sought P200,000.00 in moral damages, P100,000.00 in exemplary damages, and P50,000.00 in attorney's fees.

The petitioners admitted publication of the news item, ostensibly out of a "social and moral duty to inform the public on matters of general interest, promote the public good and protect the moral public (sic) of the people," and that the story was published in good faith and without malice.[2]

The principal source of the article was a letter[3] by a certain Atty. Efren Angara addressed to Commissioner

Andrea Domingo of the Commission on Immigration and Deportation (CID, now Bureau of Immigration), which states:

Dear Madame:

We would like to request your office to verify the true status/authenticity of the residency in the Philippines of a foreign national (a Swiss) by the name of Francis Thoenen who is presently residing at No. 10 Calcuta cor. Beirut Street, BF Homes (PH. III), Parañaque, Metro Manila. I received (sic) complaint from my clients residing around his vicinity that this foreigner had (sic) been causing troubles ever since he showed up. He is too meticulous and had (sic) been shooting dogs and cats passing his house wall everytime.

Such act which (sic) is unacceptable to the owners especially if inspite (sic) of control their pets slips (sic) out unnoticed. A confrontation between him and the owner of the dog he shoot, (sic) already occurred last time. In some instances this guy had been always driving his car barbarously inside the subdivision with children playing around (sic) the street. Before my clients petitioned themselves with the endorsement of the Homeowners Association and filed to your office for deportation we're respectfully seeking your assistance to investigate this alien to prevent further incident occurrence (sic) in the future. He should not be allowed to dominate the citizens of this country.

Very truly yours,

Atty. Efren B. Angara

The petitioners claim that Lee, as the reporter assigned to cover news events in the CID, acquired a copy of the above letter from a trusted source in the CID's Intelligence Division. They claimed to "have reasonable grounds to believe in the truth and veracity of the information derived (from their) sources." [4]

It was proven at trial that the news article contained several inaccuracies. The headline, which categorically stated that the subject of the article engaged in the practice of shooting pets, was untrue. [5] Moreover, it is immediately apparent from a comparison between the above letter and the news item in question that while the letter is a mere request for verification of Thoenen's status, Lee wrote that residents of BF Homes had "asked the Bureau of Immigration to deport a Swiss who allegedly shoots neighbors' pets." No complaints had in fact been lodged against him by any of the BF Homeowners, [6] nor had any pending deportation proceedings been initiated against him in the Bureau of Immigration. [7]

Thoenen also submitted a Certification [8] from the Office of the Bar Confidant that there was no lawyer in its rolls by the name of Efren Angara, earlier cited by petitioner Lee as the author of the letter on which she based her article. Finally, the trial also showed that despite the fact that respondent's address was indicated in the letter, Cristina Lee made no efforts to contact either him or the purported letter-writer, Atty. Angara. [9]

The petitioners claim that Lee sought confirmation of the story from the newspaper's correspondent in Parañaque, who told her that a woman who refused to identify herself confirmed that there had indeed been an incident of pet-shooting in the neighborhood involving the respondent. [10] However, the correspondent in question was never presented in court to verify the truth of this allegation. Neither was the alleged CID source presented to verify that the above letter had indeed come from the Department, nor even that the same was a certified true copy of a letter on file in their office.

On 31 August 1994, the Regional Trial Court, Branch 62, Makati City, rendered a Decision [11] in favor of the petitioners, which reads in part:

There is no malice on the part of the defendants in publishing the news item done in the exercise of their profession as journalists reporting to the people on matters of public interest. The news report was based on an

official communication filed with the Bureau of Immigration and Deportation.

As noted by the Court of Appeals in *Marti(r)ez vs. Alanao*, CA-G.R No. 27086, September 30, 1991, which is similar to the present case:

While indeed, the news item subject of the present case might have ruffled the sensitivities of plaintiff, this Court however believes that the alleged defamatory articles falls within the purview of a qualifiedly privileged matter, and that therefore, it cannot be presumed to be malicious. The onus of proving malice is accordingly shifted to the plaintiff, that is, that he must prove that the defendants were actuated by ill-will in what they caused to be printed and published, with a design to carelessly or wantonly injure the plaintiff. (*US vs. Bustos, et al.*, 37 Phil. 731)

This, plaintiff failed to do, consequently, his case must fall.

The publication in question is a privileged communication protected by the freedom of the press.

WHEREFORE, the Complaint is hereby ordered DISMISSED WITHOUT PRONOUNCEMENT AS TO COSTS.[12]

On appeal, the court a quo reversed[13] the trial court. It held that although freedom of expression and the right of speech and of the press are among the most zealously guarded in the Constitution, still, in the exercise of these rights, Article 19 of the Civil Code requires everyone to "act with justice, give everyone his due, and observe honesty and good faith." The appellate court emphasized that Thoenen was neither a public official nor a public figure, and thus,

. . . [E]ven without malice on the part of defendants-appellees, the news item published in the 30 September 1990 edition of *People's Journal* had been done in violation of the principle of abuse of right under Article 19 of the Civil Code, in the absence of a bona fide effort to ascertain the truth thereof, i.e., "to observe honesty and good faith," which makes their act a wrongful omission. Neither did they "act with justice and give everyone his due," because without ascertaining the veracity of the information given them by the Intelligence Bureau of the Bureau of Immigration, they published a news article which they were aware would bring the person specifically named therein, viz, Francis Thoenen, the plaintiff-appellant in this case, into disrepute.

....

WHEREFORE, the foregoing considered, the Decision appealed from is hereby REVERSED and SET ASIDE. In its stead, We find for the appellant and award him moral damages of P200,000.00; exemplary damages of P50,000.00, and legal fees to P30,000.00; all of which shall be borne jointly and severally by appellees.[14]

Petitioners' motion for reconsideration having been denied,[15] this petition for certiorari under Rule 45 of the 1997 Rules of Civil Procedure was filed on the following grounds:

- The Court of Appeals erred in finding the petitioners Cristina Lee, Nuguid and PJI liable under Article 19 of the Civil Code.
- The Court of Appeals erred in finding the petitioners liable for libel even if the article was based on a letter released by the Bureau of Immigration, hence a qualified privilege communication.
- The Court of Appeals erred in concluding that petitioners did not ascertain the truth of the subject news item.
- The Court of Appeals erred in awarding damages notwithstanding that the same was excessive unconscionable and devoid of any basis.

The petitioners argue that this case is one for damages arising from libel, and not one for abuse of rights under the New Civil Code. They further claim the constitutional protections extended by the freedom of speech and of the

press clause of the 1987 Constitution against liability for libel, claiming that the article was published in fulfillment of its social and moral duty to inform the public "on matters of general interest, promote the public good and protect the moral [fabric] of the people." [16] They insist that the news article was based on a letter released by the Bureau of Immigration, and is thus a qualifiedly privileged communication. To recover damages, the respondent must prove its publication was attended by actual malice - that is, with knowledge that it was false or with reckless disregard of whether it was false or not. [17]

For the reasons stated below, we hold that the constitutional privilege granted under the freedom of speech and the press against liability for damages does not extend to the petitioners in this case.

The freedom of speech and of the press is not absolute. The freedom of speech and press and assembly, first laid down by President McKinley in the Instruction to the Second Philippine Commission of 07 April 1900, is an almost verbatim restatement of the first amendment of the Constitution of the United States. [18] Enshrined in Section 4, Article III of the Bill of Rights of the 1987 Constitution, it states, "No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."

But not all speech is protected. "The right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." [19]

Libel is not protected speech. Article 353 of the Revised Penal Code defines libel as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."

For an imputation to be libelous, the following requisites must be met: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; (c) identity of the person defamed; and (d) existence of malice. [20] In *Vasquez v. Court of Appeals*, [21] we had occasion to further explain. Thus:

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead.

There is publication if the material is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark. What is material is that a third person has read or heard the libelous statement, for "a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself."

On the other hand, to satisfy the element of identifiability, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement.

Finally, malice or ill will must be present. Art. 354 of the Revised Penal Code provides:

Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

- A private communication made by any person to another in the performance of any legal, moral or security

duty; and

- A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. (citations omitted, emphasis supplied)

In this case, there is no controversy as to the existence of the three elements. The respondent's name and address were clearly indicated in the article ascribing to him the questionable practice of shooting the wayward pets of his neighbors. The backlash caused by the publication of the article was in fact such that stones had been thrown at their house, breaking several flower pots, and daily and nightly calls compelled him to request a change of their telephone number.[22] These facts are not contested by the petitioners. What the petitioners claim is the absence of proof of the fourth element - malice.

As a general rule, malice is presumed. Article 354 of the Revised Penal Code states:

ART. 354. Requirement of Publicity. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

- A private communication made by any person to another in the performance of any legal, moral or social duty; and

- A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

The article is not a privileged communication. We first discussed the freedom of speech and press and assembly vis-a-vis the laws on libel and slander in the groundbreaking case of *US v. Bustos*,[23] where we applied the prevailing English and American jurisprudence to the effect that:

The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good? Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary - to any or all the agencies of Government - public opinion should be the constant source of liberty and democracy. (citations omitted)

The demand to protect public opinion for the welfare of society and the orderly administration of government inevitably lead to the adoption of the doctrine of privileged communication. "A privileged communication may be either absolutely privileged or qualifiedly privileged. Absolutely privileged communications are those which are not actionable even if the author has acted in bad faith. An example is found in Sec. 11, Art. VI of the 1987 Constitution which exempts a member of Congress from liability for any speech or debate in the Congress or in any Committee thereof. Upon the other hand, qualifiedly privileged communications containing defamatory imputations are not actionable unless found to have been made without good intention or justifiable motive. To this genre belong 'private communications' and 'fair and true report without any comments or remarks.'"[24]

The appellate court correctly ruled that the petitioners' story is not privileged in character, for it is neither "private communication" nor a fair and true report without any comments or remarks.

US v. Bustos defined the concept of private communication thus: "A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contained criminary matter which without this privilege would be slanderous and actionable. A pertinent illustration of the application of qualified privilege is a complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter." [25]

This defense is unavailing to petitioners. In *Daez v. Court of Appeals* [26] we held that:

As a rule, it is the right and duty of a citizen to make a complaint of any misconduct on the part of public officials, which comes to his notice, to those charged with supervision over them. Such a communication is qualifiedly privileged and the author is not guilty of libel. The rule on privilege, however, imposes an additional requirement. Such complaints should be addressed solely to some official having jurisdiction to inquire into the charges, or power to redress the grievance or has some duty to perform or interest in connection therewith. (emphasis supplied)

In the instant case, even if we assume that the letter written by the spurious Atty. Angara is privileged communication, it lost its character as such when the matter was published in the newspaper and circulated among the general population. A written letter containing libelous matter cannot be classified as privileged when it is published and circulated in public, [27] which was what the petitioners did in this case.

Neither is the news item a fair and true report without any comments or remarks of any judicial, legislative or other official proceedings; there is in fact no proceeding to speak of. Nor is the article related to any act performed by public officers in the exercise of their functions, for it concerns only false imputations against Thoenen, a private individual seeking a quiet life.

The petitioners also claim to have made the report out of a "social and moral duty to inform the public on matters of general interest."

In *Borjal v. Court of Appeals*, we stated that "the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. We stated that the doctrine of fair commentaries means "that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition." [28]

Again, this argument is unavailing to the petitioners. As we said, the respondent is a private individual, and not a public official or public figure. We are persuaded by the reasoning of the United States Supreme Court in *Gertz v. Robert Welch, Inc.*, [29] that a newspaper or broadcaster publishing defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability, for injury inflicted, even if the falsehood arose in a discussion of public interest. [30]

Having established that the article cannot be considered as privileged communication, malice is therefore presumed, and the fourth requisite for the imputation of libel to attach to the petitioners in this case is met. The news article is therefore defamatory and is not within the realm of protected speech. There is no longer a need to discuss the other assignment of errors, save for the amount of damages to which respondent is entitled.

In *Policarpio v. Manila Times Publishing Co., Inc.*, [31] we awarded damages where the defendants deliberately

presented a private individual in a worse light than what she actually was, and where other factual errors were not prevented although defendants had the means to ascertain the veracity of their report. Such are the facts obtaining here.

We must point out that Lee's brief news item contained falsehoods on two levels. On its face, her statement that residents of BF Homes had "asked the Bureau of Immigration to deport a Swiss who allegedly shoots neighbors' pets" is patently untrue since the letter of the spurious Atty. Angara was a mere request for verification of Thoenen's status as a foreign resident. Lee's article, moreover, is also untrue, in that the events she reported never happened. The respondent had never shot any of his neighbors' pets, no complaints had been lodged against him by his neighbors, and no deportation proceedings had been initiated against him. Worse, the author of Lee's main source of information, Atty. Efren Angara, apparently either does not exist, or is not a lawyer. Petitioner Lee would have been enlightened on substantially all these matters had she but tried to contact either Angara or Thoenen.

Although it has been stressed that a newspaper "should not be held to account to a point of suppression for honest mistakes, or imperfection in the choice of words,"[32] even the most liberal view of free speech has never countenanced the publication of falsehoods, especially the persistent and unmitigated dissemination of patent lies.[33] "There is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate." [34] The use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected. Calculated falsehood falls into that class of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality..." The knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection" (citations omitted).[35]

The legitimate state interest underlying the law of libel is the compensation of the individuals for the harm inflicted upon them by defamatory falsehood. After all, the individual's right to protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty." [36]

The appellate court awarded Thoenen moral damages of P200,000.00, exemplary damages of P50,000.00 and legal fees of P30,000.00, to be borne jointly and severally by the herein petitioners. In *Guevarra v. Almario*, [37] we noted that the damages in a libel case must depend upon the facts of the particular case and the sound discretion of the court, although appellate courts were "more likely to reduce damages for libel than to increase them." [38] So it is in this case.

WHEREFORE, the Decision of the Court of Appeals of 17 January 2000 reversing the Decision of the Regional Trial Court, Branch 62, Makati City, of 31 August 1994 is hereby AFFIRMED, subject to the modification that petitioners are ordered to pay, jointly and severally, moral damages in the sum of P100,000.00, exemplary damages of P30,000.00, and legal fees of P20,000.00. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Exh. C-1-A; Records, p. 58.

[2] Records, p. 18.

[3] Dated 01 September 1990; Records, p. 84.

[4] Ibid.

[5] TSN, 14 November 1991, pp. 16-19.

[6] Id., p. 8.

[7] Id., pp. 14-15.

[8] Records, p. 7.

[9] TSN, 08 September 1994, pp. 5-6.

[10] Id., p. 3.

[11] Records, pp. 138-139.

[12] Records, p. 139.

[13] In its Decision of 17 January 2000, in CA-G.R. SP No. 50647; penned by Associate Justice Romeo A. Brawner with Associate Justices Fermin A. Martin, Jr. and Renato C. Dacudao, concurring.

[14] Rollo, pp. 23-27.

[15] In a Resolution dated 02 March 2000, CA Rollo, p. 106.

[16] Records, p. 18.

[17] Vasquez v. Court of Appeals, G.R. No. 118971, 15 September 1999, 314 SCRA 460, citing New York Times v. Sullivan, 376 U.S. 254.

[18] US v. Bustos, 37 Phil. 731 (1918).

[19] Chaplinsky v. New Hampshire, 315 U.S. 568, 62 Ct. 766, 86 L.Ed. 1031.

[20] Vasquez v. Court of Appeals, supra, note 17, citing Daez v. Court of Appeals, G.R. No. 47971, 31 October 1990, 191 SCRA 61.

[21] Id., pp. 471-472.

[22] TSN, 14 November 1991, p. 10.

[23] Supra, note 18.

[24] Borjal v. Court of Appeals, G.R. No. 126466, 14 January 1999, 301 SCRA 1.

[25] Supra, note 18, pp. 742-743.

[26] Supra, note 20, p. 69.

[27] Ibid., citing Lacsa v. IAC, G.R. No. 74907, 23 May 1988, 161 SCRA 427.

[28] Supra, note 24, p. 23.

[29] 418 U.S. 323 (1974).

[30] Three reasons were advanced by Justice Powell for making a distinction between private individuals on one hand and public officers and public figures in the other. First, public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater. Second, an individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. Those classed as public figures stand in a similar position. For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment. Third, this would impose an additional difficulty on trial court judges to decide which publications address issues of "general interest" and which do not.[30] Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an "influential role in ordering society." (Curtis Publishing Co. v. Butts, 388 U.S., at 164) He has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.

[31] G.R. No. L-16027, 30 May 1962, 5 SCRA 148.

[32] Lopez v. Court of Appeals, G.R. No. L-26549, 31 July 1970, 34 SCRA 116, 127, citing Quisumbing v. Lopez, et al., G.R. No. L-6465, 31 January 1955, 96 Phil. 510.

[33] In Re: Emil P. Jurado, at p. 347.

[34] Gertz v. Robert Welch, Inc., supra, note 29, citing New York Times Co. v. Sullivan, 376 US at 270.

[35] Garrison v. Louisiana, 379 US 64 (1964).

[36] Supra, note 29, citing Justice Stewart's concurring opinion in Rosenblatt v. Baer, 383 US 75 (1966).

[37] 56 Phil. 477 (1932).

[38] Lopez v. Court of Appeals, supra, note 32, p. 129, citing Guevarra v. Almario, Ibid.

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