HERMENEGILDO M. TRINIDAD, PETITIONER, VS. ESTRELLA ACAPULCO, RESPONDENT.

G.R. NO. 147477. June 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 42518 promulgated on February 16, 2001, which affirmed the Decision[2] of the Regional Trial Court (RTC) Cebu City, Branch 6 dated March 23, 1992.

The facts are as follows:

On May 6, 1991, respondent Estrella Acapulco filed a Complaint before the RTC seeking the nullification of a sale she made in favor of petitioner Hermenegildo M. Trinidad. She alleged: Sometime in February 1991, a certain Primitivo Cañete requested her to sell a Mercedes Benz for P580,000.00. Cañete also said that if respondent herself will buy the car, Cañete was willing to sell it for P500,000.00. Petitioner borrowed the car from respondent for two days but instead of returning the car as promised, petitioner told respondent to buy the car from Cañete for P500,000.00 and that petitioner would pay respondent after petitioner returns from Davao. Following petitioner's instructions, respondent requested Cañete to execute a deed of sale covering the car in respondent's favor for P500,000.00 for which respondent issued three checks in favor of Cañete. Respondent thereafter executed a deed of sale in favor of petitioner even though petitioner did not pay her any consideration for the sale. When petitioner returned from Davao, he refused to pay respondent the amount of P500,000.00 saying that said amount would just be deducted from whatever outstanding obligation respondent had with petitioner. Due to petitioner's failure to pay respondent, the checks that respondent issued in favor of Cañete bounced, thus criminal charges were filed against her.[3] Respondent then prayed that the deed of sale between her and petitioner be declared null and void; that the car be returned to her; and that petitioner be ordered to pay damages.[4]

In his Answer petitioner contended that: it is not true that he borrowed the car and that any demand was made to return it; he also did not give any instructions to respondent to buy the car from Cañete because as early as September 28, 1990, Cañete has already sold the car to respondent for P500,000.00; at the time respondent executed the deed of sale in his favor on March 4, 1991, respondent was already in possession of the deed of sale from Cañete; the amount of P500,000.00 was fully paid by way of dation in payment to partially extinguish respondent's obligation with petitioner; the contract entered into was a true sale of a motor vehicle and the mode of payment was that of dation in payment agreed upon at the time of the sale.[5]

The parties filed their respective pre-trial briefs. Petitioner raised as issue: whether or not there is valid dation in payment;[6] while respondent put forth the questions: whether or not she is indebted to petitioner in the amount of P566,000.00, and whether the car was ceded by her to petitioner in order to partially pay off her obligation of P566,000.00 to petitioner as dation in payment.[7]

On September 6, 1991, the trial court came out with its Pre-Trial Order limiting the issue to whether there is dacion en pago between petitioner and respondent.[8]

Trial ensued and on March 23, 1992, the RTC rendered its Decision finding that no dacion en pago is present in this case as common consent was not proven.[9] The fallo of said decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff (Acapulco) and against the defendant (Trinidad), to wit:
>
> - Declaring the deed of sale executed by plaintiff in favor of defendant as null and void for being fictitious and/or simulated;
>
> - The defendant is ordered to return the Mercedes Benz car in question to plaintiff in the same condition when it was delivered to him by plaintiff;
>
> - Defendant is ordered to pay plaintiff the amount of P100,000.00 as moral damages; P20,000.00 as exemplary damages and attorney's fees of P20,000.00 as well as litigation expenses in the amount of P5,000.00 and costs.
>
> SO ORDERED.[10]

Petitioner filed a Motion for Reconsideration arguing that contrary to the findings of the trial court that there was no common consent, the offer to deliver the car to him actually came from respondent after petitioner told her that he was going to file estafa cases against her for her failure to pay her debt to petitioner.[11]

Petitioner also filed a Supplemental Motion and for the first time averred that assuming that respondent did not agree to having the purchase price charged against the P566,000.00 she owed petitioner, nonetheless, with or without her consent and/or knowledge, the obligations parties owed to each other were extinguished by operation of law or through legal compensation in the amount of P500,000.00.[12]

The RTC issued an Order dated October 18, 1992 denying the Motion for Reconsideration and Supplemental Motion of petitioner stating that the claim of dacion en pago is inexistent in this case and the defense of legal compensation was not alleged or pleaded in petitioner's Answer.[13]

Petitioner appealed to the CA which affirmed the Decision of the trial court, finding that the issue of legal compensation was filed too late as it was brought up only in the supplemental motion for reconsideration; that the parties agreed that the issue to be tried was whether or not there was dacion en pago; that dacion en pago however is not present in this case as the parties did not give their consent thereto; that there can also be no legal compensation as one of the obligations of this case did not entail payment of a monetary debt but the delivery of a car; and that the admission of petitioner that the sale price of the car was not paid entitled respondent to file the action for rescission of sale.[14]

Petitioner now comes before this Court claiming that:

> - THE HONORABLE APPELLATE COURT ERRED IN HOLDING THAT THE ANSWER DID NOT ALLEGE FACTS AMOUNTING TO EXTINGUISHMENT OF OBLIGATION BY LEGAL COMPENSATION;
>
> - THE HONORABLE APPELLATE COURT ERRED IN GIVING UNDUE RELIANCE TO PETITIONER'S CONCLUSION IN HIS ANSWER THAT HIS OBLIGATION WAS DEEMED EXTINGUISHED BECAUSE OF DATION IN PAYMENT INSTEAD OF DISREGARDING SAID CONCLUSION AND SIMPLY APPRECIATING THE FACTS ALLEGED AND PROVED AND DRAWING FOR ITSELF THE JURIDICAL IMPLICATION OF SAID FACTS;
>
> - ASSUMING THAT LEGAL COMPENSATION HAD NOT BEEN ALLEGED IN THE ANSWER, STILL

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THE HONORABLE APPELLATE COURT ERRED IN HOLDING THAT LEGAL COMPENSATION AS A MANNER OF EFFECTING PAYMENT HAD TO BE SPECIFICALLY ALLEGED, THE SAME BEING ONLY EVIDENTIARY;

- ASSUMING THAT LEGAL COMPENSATION HAD TO BE ALLEGED AND THAT THE ANSWER FAILED TO DO SO, NEVERTHELESS THE HONORABLE APPELLATE COURT ERRED IN IGNORING THE EVIDENCE PRESENTED WITHOUT OBJECTION FROM RESPONDENT SHOWING THAT PARITES' (SIC) MUTUAL MONETARY OBLIGATIONS TO EACH OTHER HAD BEEN EXTINGUISHED TO THE CONCURRENT AMOUNT OF P500,00.00;

- THE HONORABLE APPELLATE COURT ERRED IN HOLDING THAT LEGAL COMPENSATION COULD BE EFFECTED ONLY THROUGH THE CONSENT OF THE PARTIES;

- THE HONORABLE APPELLATE COURT ERRED IN HOLDING THAT NON-PAYMENT OF THE PURCHASE PRICE MADE THE CONTRACT OF SALE FICTITIOUS, HENCE NULL AND VOID;

- IN VIEW OF THE RESPONDENT'S ADMISSION THAT SHE OWED PETITIONER P566,000.00, THE HONORABLE APPELLATE COURT ERRED IN NOT ORDERING RESPONDENT TO PAY THE SAME WITH LEGAL INTEREST;

- THE HONORABLE APPELLATE COURT ERRED IN ASSESSING DAMAGES AGAINST THE PETITIONER.[15]

Petitioner argues that: the purchase price of the car had been automatically offset by respondent's own monetary obligation of P566,000.00, even if he and respondent had not agreed to offsetting following Article 1290[16] of the Civil Code; Bank of the Philippine Islands v. Court of Appeals[17] also held that compensation shall take place when two persons, in their own right, are creditors and debtors of each other; legal compensation takes place by operation of law and may be taken up even though it is not raised in the pleadings or during trial; it is the duty of courts to grant the relief to which the parties are entitled as shown by the allegations and the facts proven at the trial; here, while petitioner claimed dation in payment, there was more than enough testimony and admissions to prove elements of legal compensation; failure to pay the agreed purchase price does not make the contract of sale fictitious and null and void; the CA erred in not ordering respondent to pay petitioner the balance of her partially extinguished indebtedness and in assessing damages against him as there was no basis therefor.[18]

In her Comment, respondent counters that: it was only in the Supplemental Motion for Reconsideration of the decision of the trial court that petitioner changed his theory and started claiming legal compensation as a defense; the CA did not commit any error in rejecting the belated new defense of petitioner as it would be offensive to the basic rule of fair play, justice and due process; Article 1279 of the Civil Code also states that for legal compensation to be proper both debts should consist of sum of money; in this case, one of the obligations does not entail payment of money but delivery of a car.[19]

Petitioner merely reiterated his arguments in his Memorandum,[20] while respondent in hers, further averred that: she is not the owner of the car, but was only in possession thereof in order to sell it at a price of P580,000.00 with P80,000.00 going to her; both the trial court and the CA failed to make a finding as to the exact amount respondent owed petitioners.[21]

Stripped to its basics, what petitioner is contending is that legal compensation should be appreciated, though not expressly stated in his Answer to the Complaint before the trial court, as his allegations therein and the facts proven at the trial show the presence of legal compensation. He further argues that, in any case, legal compensation takes place by operation of law even without the consent of the interested parties.

The Court resolves to grant the petition.

Our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned.[22] The interest of justice dictates that the Court consider and resolve issues even though not particularly raised if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues already found by them.[23] While it is true that petitioner failed to raise the issue of legal compensation at the earliest opportunity, this should not preclude the courts from appreciating the same especially in this case, where ignoring the same would only result to unnecessary and circuitous filing of cases.

Indeed, the doctrine that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below but ventilated for the first time only in a motion for reconsideration or on appeal, is subject to exceptions, such as when:

> (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[24]

In this case, petitioner raised the issue of dacion en pago in his Answer to respondent's Complaint. The trial court thus focused on ascertaining whether the elements of dacion en pago are present in the case at bar, i.e.: whether there is consent, object certain and cause or consideration, with common consent as an essential prerequisite to have the effect of totally extinguishing the debt or obligation.[25] As respondent's consent was not adequately proven by petitioner, the trial court held that there could be no dacion en pago. Petitioner thereafter filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration where, for the first time, he raised the issue of legal compensation. In striking down petitioner's claim of legal compensation, the trial court reasoned that it was raised too late. This was affirmed by the CA.

This Court holds otherwise.

Compensation takes effect by operation of law even without the consent or knowledge of the parties concerned when all the requisites mentioned in Article 1279 of the Civil Code are present.[26] This is in consonance with Article 1290 of the Civil Code which provides that:

> Article 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

Since it takes place ipso jure,[27] when used as a defense, it retroacts to the date when all its requisites are fulfilled.[28]

Article 1279 provides that in order that compensation may be proper, it is necessary:

(1) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) that the two debts be due;

(4) that they be liquidated and demandable;

(5) that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Here, petitioner's stance is that legal compensation has taken place and operates even against the will of the parties because: (a) respondent and petitioner were personally both creditor and debtor of each other; (b) the monetary obligation of respondent was P566,000.00 and that of the petitioner was P500,000.00 showing that both indebtedness were monetary obligations the amount of which were also both known and liquidated; (c) both monetary obligations had become due and demandable —petitioner's obligation as shown in the deed of sale and respondent's indebtedness as shown in the dishonored checks; and (d) neither of the debts or obligations are subject of a controversy commenced by a third person.

While the proceedings in the RTC focused on ascertaining the presence of the elements of dacion en pago, it was likewise proven that petitioner owed respondent the amount of P500,000.00 while respondent owed petitioner P566,000.00; that both debts are due, liquidated and demandable, and; that neither of the debts or obligations are subject of a controversy commenced by a third person.

Respondent in her cross-examination categorically admitted that she is indebted to petitioner as follows:

Q But you will admit that you have borrowed several times from Mr. Trinidad some money?

A Yes.

Q And in fact the total amount of money that you have borrowed from Mr. Trinidad reaches to P566,000.00, right?

A Yes.

Q And in fact you have issued checks to cover for this account?

A Yes.

Q There were several checks you have issued, right?

A Yes.

Q And all of these checks bounced?

A Yes.[29]

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Q x x x It is now very clear, Mrs. Acapulco, that at the time you executed a deed of absolute sale of the car in favor of Hermenegildo Trinidad you have an outstanding account with him in the amount of P566,000.00?

A Yes.[30]

Ignoring this admission would only result in added burden to petitioner as well as the courts as petitioner will be forced to file a separate case for collection of sum of money just so he could enforce his right to collect from respondent. This is precisely what compensation seeks to avoid as its aim is to prevent unnecessary suits and payments through the mutual extinction of concurring debts by operation of law.[31]

The claim of respondent that there could be no legal compensation in this case as one of the obligations consists of delivery of a car and not a sum of money must also fail. Respondent sold the car to petitioner on March 4, 1991 for P500,000.00 while she filed her complaint for nullification of the sale only on May 6, 1991. As legal compensation takes place ipso jure, and retroacts to the date when its requisites are fulfilled, legal compensation has already taken place at the time of the sale. At such time, petitioner owed respondent the sum of P500,000.00 which is the price of the vehicle.

Consequently, by operation of law, the P500,000.00 which petitioner owed respondent is off-set against the P566,000.00 owed by respondent to petitioner, leaving a balance of P66,000.00, which respondent should pay with 12% interest per annum from date of judicial or extrajudicial deed.[32] Since there was no extrajudicial deed in this case, the interest shall be resolved from the date petitioner filed its Supplemental Motion for Reconsideration invoking for the first time legal compensation, that is, May 20, 1992.[33]

Finally, the Court agrees with petitioner that the trial court erred in awarding damages in favor of respondent.

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like, and while no proof of pecuniary loss is necessary in order that moral damages may be awarded, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts.[34] Claims must be substantiated by clear and convincing proof[35] and there must be clear testimony on the anguish and other forms of mental sufferings as mere allegations will not suffice.[36] Allegations of besmirched reputation, embarrassment and sleepless nights are insufficient for it must be shown that the proximate cause thereof was the unlawful act or omission of the opposing party.[37]

Indeed, for a court to arrive upon a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before it.[38] There must be definite findings as to what the supposed moral damages suffered consisted of.[39] The award of moral damages must be solidly anchored on a definite showing that the claiming party actually experienced emotional and mental sufferings.[40]

In this case, respondent merely testified that after petitioner refused the payment of the car as well as its return, she was very much worried, which if converted into monetary amount is equivalent to P200,000.00.[41] We deem such testimony insufficient to warrant the award of moral damages.

Similarly, in order that exemplary damages may be awarded, it must be shown that the wrongful act was accompanied by bad faith or done in a wanton, fraudulent, reckless or malevolent manner.[42] Exemplary damages are also allowed only in addition to moral damages such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages.[43] As moral damages are improper in the present case, so is the award of exemplary damages.

The decision of the trial court also does not mention the reason for the award of attorney's fees and the award was

simply contained in the dispositive portion of the decision. Again, the trial court erred on this score as it must explicitly state in the body of its decision and not only in the dispositive portion thereof the legal reason for the award of attorney's fees.[44]

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated February 16, 2001 is REVERSED and SET ASIDE. The P500,000.00 which Hermenegildo M. Trinidad owed Estrella Acapulco is offset against the P566,000.00 which Acapulco owed Trinidad. Acapulco is ordered to pay Trinidad the amount of P66,000.00 plus interest at 12% per annum from May 20, 1992 until full payment.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices B. A. Adefuin-De La Cruz and Rebecca De Guia-Salvador, rollo, pp. 35-45.

[2] Penned by Judge Ramon AM. Torres, rollo, pp. 27-33.

[3] Records, pp. 1-3.

[4] Id. at 3.

[5] Id. at 9-10.

[6] Id. at 28.

[7] Id. at 25.

[8] Records, p. 37.

[9] Rollo, p. 31.

[10] Id. at 33.

[11] Records, pp. 56-57.

[12] Id. at 67-69.

[13] Records, p. 87

[14] Rollo, pp. 41-44.

[15] Rollo, pp. 8-9.

[16] CIVIL CODE, Article 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

[17] 325 Phil. 930 (1996).

[18] Rollo, pp. 10-22.

[19] Id. at 53-54.

[20] Id. at 76-96.

[21] Id. at 64-67.

[22] Mendoza v. Bautista, G.R. No. 143666, March 18, 2005, 453 SCRA 691, 701.

[23] Insular Life Assurance Co. Ltd. Employees Association-NATU v. Insular Life Assurance Co. Ltd., No. L-25291, March 10, 1977, 76 SCRA 50, 61-62.

[24] Supra note 22, at 702-703.

[25] Vda. de Jayme v. Court of Appeals, 439 Phil. 192, 210 (2002).

[26] Pioneer Insurance & Surety Corporation v. Court of Appeals, G.R. No. 76509, December 15, 1989, 180 SCRA 156, 160-161; International Corporate Bank v. Intermediate Appellate Court, No. L-69560, June 30, 1988, 163 SCRA 296, 305.

[27] Mavest, Inc. v. Sampaguita Garment Corp., G.R. No. 127454, September 21, 2005, 470 SCRA 440.

[28] Bank of the Philippine Islands v. Court of Appeals, supra note 17 at 938.

[29] TSN, January 13, 1992, pp. 21-22.

[30] Id. at 36-37.

[31] Nadela v. ECCO-Asia, G.R. No. 145259, October 25, 2005, 474 SCRA 168, 181.

[32] Eastern Assurance and Surety Corporation v. Court of Appeals, 379 Phil. 84, 91 (2000).

[33] Records, p. 72.

[34] Kierulf v. Court of Appeals, 336 Phil. 414, 431-432 (1997).

[35] Mahinay v. Velasquez, Jr., G.R. No. 152753, January 13, 2004, 419 SCRA 118, 121.

[36] Kierulf v. Court of Appeals, supra.

[37] Francisco v. Ferrer, Jr., G.R. No. 142029, February 28, 2001, 353 SCRA 261, 266.

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

[39] Id.

[40] Id.

[41] TSN, January 13, 1992, pp. 18-19.

[42] Francisco v. Ferrer, Jr., supra note 37 at 267.

[43] Mahinay v. Velasquez, Jr., supra note 35 at 122; Quezon City Government v. Dacara, supra.

[44] Pimentel v. Court of Appeals, 366 Phil. 494 (1999).

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