

BPI FAMILY SAVINGS BANK, INC. AND HEDZELITO NOEL BAYABORDA, PETITIONERS, VS. ROMEO MANIKAN, RESPONDENT.

G.R. NO. 148789. January 16, 2003

Ponente: VITUG, J.

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VITUG, J.:

Petitioners seek a review of the decision of the Court of Appeals in C.A. G.R. SP. No. 48011 which has affirmed the judgment of the Regional Trial Court, Branch 26, of Iloilo City, dismissing the complaint of petitioners for mandamus and ordering them to pay respondent the sum of P30,000.00 by way of attorney's fees.

It would appear that respondent, being the City Treasurer of Iloilo City, assessed petitioner bank business taxes for the years 1992 and 1993. On 26 January 1994, the bank issued two manager's checks payable to the City Treasurer of Iloilo City, the first, Manager's Check No. 010649 for P462,270.60, was to cover the business tax for the year 1992, and the second, Manager's Check No. 010650 in the amount of P482,988.45, was to settle the business tax for the year 1993. Hedzelito Bayaborda, then manager of the bank's Iloilo Branch, instructed an employee, Edmund Sabio, to deliver the two manager's checks to the Secretary to the City Mayor, a certain Toto Espinosa, who, in turn, handed them over to his secretary, Leila Salcedo, for transmittal to the City Treasurer. The value of the checks were eventually credited to the account of the City Treasurer of Iloilo City. The checks, however, were not applied to satisfy the tax liabilities of petitioner but of other taxpayers.

The misapplication of the proceeds of the checks came to the knowledge of respondent City Treasurer who, thereupon, created a committee to look into the matter. The investigation revealed that it was upon the representation of Leila Salcedo that the manager's checks were used to pay tax liabilities of other taxpayers and not those of petitioner bank. Meanwhile, the bank, through counsel, made a demand on respondent to issue official receipts to show that it had paid its business taxes for the years 1992 and 1993 covered by the diverted manager's checks. When he refused to issue the receipts requested, respondent was sued by petitioners for mandamus and damages.

The Regional Trial Court dismissed the complaint for mandamus and ruled that petitioners had no clear legal right to demand the issuance of official receipts nor could respondent, given the circumstances, be compelled to issue another set of receipts in the name of the bank. The trial court further ordered petitioners to pay respondent the sum of P30,000.00 by way of attorney's fees.

The Court of Appeals, on appeal by petitioners, sustained the trial court in toto.

In their petition for review before this Court, petitioners urge a reversal of the decision of the appellate court contending that -

“a) AN ACTION FOR MANDAMUS NECESSARILY INCLUDES INDEMNIFICATION FOR DAMAGES AND IS ASSESSED ON A PUBLIC OFFICIAL'S PRIVATE CAPACITY. HENCE, SUING A PUBLIC OFFICIAL IN HIS PRIVATE CAPACITY DOES NOT AS A MATTER OF RIGHT ENTITLE HIM TO AN AWARD OF ATTORNEY'S FEES BY WAY OF COUNTERCLAIM.

“b) THE RECEIPT BY THE CITY TREASURER'S OFFICE OF ILOILO OF THE FACE VALUE OF THE TWO MANAGER'S CHECKS INTENDED FOR PAYMENT OF ITS BUSINESS TAXES FOR THE YEAR 1992 AND 1993 ENTITLES IT TO THE ISSUANCE OF AN OFFICIAL RECEIPT ENFORCEABLE BY A WRIT OF MANDAMUS.”

In order that a writ of mandamus may aptly issue, it is essential that, on the one hand, the person petitioning for it has a clear legal right to the claim that is sought and that, on the other hand, the respondent has an imperative duty to perform that which is demanded of him.[1] Mandamus will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. The principal function of the writ of mandamus is to command and to expedite, not to inquire and to adjudicate; thus, it is neither the office nor the aim of the writ to secure a legal right but to implement that which is already established. Unless the right to the relief sought is unclouded, mandamus will not issue.[2]

The checks delivered by petitioner bank to Toto Espinosa were manager's checks. A manager's check, like a cashier's check, is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity and honor behind its issuance. By its peculiar character and general use in commerce, a manager's check or a cashier's check is regarded substantially to be as good as the money it represents.[3]

By allowing the delivery of the subject checks to a person who is not directly charged with the collection of its tax liabilities, the bank must be deemed to have assumed the risk of a possible misuse thereof even as it appears to have fallen short of the diligence ordinarily expected of it. The bank, of course, is not precluded from pursuing a right of action against those who could have been responsible for the wrongdoing or who might have been unjustly benefited thereby.

The award of attorney's fees in favor of respondent City Treasurer, however, should be deleted. Such an award, in the concept of damages under Article 2208 of the Civil Code, demands factual and legal justifications.[4] While the law allows some degree of discretion on the part of the courts in awarding attorney's fees and expenses of litigation, the use of that judgment, however, must be done with great care approximating as closely as possible the instances exemplified by the law. Attorney's fees in the concept of damages are not recoverable against a party just because of an unfavorable judgment. Repeatedly, it has been said that no premium should be placed on the right to litigate.[5]

WHEREFORE, the instant petition is partly granted. The appealed decision is affirmed save for the award of attorney's fees in favor of private respondent which is ordered deleted. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Lim Tay vs. Court of Appeals, 293 SCRA 634.

[2] Pacheco vs. Court of Appeals, 333 SCRA 680.

[3] Bank of the Philippine Islands vs. Court of Appeals, 326 SCRA 641; Tan vs. Court of Appeals, 239 SCRA 310.

[4] Ranola vs. Court of Appeals, 322 SCRA 1.

[5] Philtranco Service Enterprises, Inc. vs. Court of Appeals, 273 SCRA 562; Morales vs. Court of Appeals, 274 SCRA 282; American Home Assurance Company vs. Chua, 309 SCRA 250.

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