JOHN KAM BIAK Y. CHAN, JR., PETITIONER, VS. IGLESIA NI CRISTO, INC., RESPONDENT.

G.R. NO. 160283. October 14, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a petition for review on certiorari[1] assailing the Decision[2] of the Court of Appeals in CA-G.R. CV No. 65976, dated 25 September 2003. Said Decision denied the petitioner's appeal from the decision of the Regional Trial Court (RTC), La Union, Branch 31, in Civil Case No. A-1646.

THE FACTS

The antecedents of the instant case are quite simple.

The Aringay Shell Gasoline Station is owned by the petitioner. It is located in Sta. Rita East, Aringay, La Union, and bounded on the south by a chapel of the respondent.

The gasoline station supposedly needed additional sewerage and septic tanks for its washrooms. In view of this, the services of Dioscoro "Ely" Yoro (Yoro), a retired general of the Armed Forces of the Philippines, was procured by petitioner, as the former was allegedly a construction contractor in the locality.

Petitioner and Yoro executed a Memorandum of Agreement[3] (MOA) on 28 February 1995 which is reproduced hereunder:

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

> This MEMORANDUM OF AGREEMENT, executed this 28th day of February, 1995, by and between:
>
> JOHN Y. CHAN, of legal age, single, and a resident of Aringay, La Union, now and hereinafter called the FIRST PARTY;
>
> GEN. ELY E. YORO, Jr., of legal age, married, and a resident of Damortis, Sto. Tomas, La Union, hereinafter referred to as the SECOND PARTY:
>
> WITNESSETH that:
>
> WHEREAS, the FIRST PARTY is the owner of a parcel of land located at Sta. Rita, Aringay, La Union.
>
> WHEREAS, the FIRST PARTY, desires to dig a septic tank for its perusal in the property bordering Iglesia ni Cristo.
>
> WHEREAS, the SECOND PARTY is willing to contract the intended digging of septic tank for the first party.
>
> WHEREAS, the FIRST PARTY and SECOND PARTY has (sic) agreed verbally as to the compensation of the

said digging of septic tank.

WHEREFORE, for and in consideration of the terms and covenants hereinbelow set forth, the FIRST PARTY hereby AGREES and ALLOWS the SECOND PARTY to undertake the digging of the parcel of land for the exclusive purpose of having a septic tank.

TERMS AND COVENANTS

1. The SECOND PARTY shall contract the said digging;

2. The FIRST PARTY shall have complete control over the number of personnel who will be entering the property for said contract;

3. The digging shall be allowed for a period of three (3) weeks only, commencing on March 28, 1995, unless extended by agreement of the parties;

4. Any damage within or outside the property of the FIRST PARTY incurred during the digging shall be borne by the SECOND PARTY;

5. In the event that valuable objects are found on the property, the same shall be divided among the parties as follows:

FIRST PARTY - 60%
SECOND PARTY - 40%

6. In the event that valuable objects are found outside the property line during the said digging, the same shall be divided among the parties as follows:

FIRST PARTY - 35%
SECOND PARTY - 65%

7. In case government or military interference or outside intervention is imminent, the FIRST PARTY hereby reserves the option to stop the digging at any stage thereof.

IN WITNESS WHEREOF, We have hereunto set our hands on the day and year first above-written at Aringay, La Union.[4]

Diggings thereafter commenced. After some time, petitioner was informed by the members of the respondent that the digging traversed and penetrated a portion of the land belonging to the latter. The foundation of the chapel was affected as a tunnel was dug directly under it to the damage and prejudice of the respondent.

On 18 April 1995, a Complaint[5] against petitioner and a certain Teofilo Oller, petitioner's engineer, was filed by the respondent before the RTC, La Union, Branch 31, docketed therein as Civil Case No. A-1646. Petitioner and Oller filed an Answer with Third-Party Complaint[6] impleading Yoro as third-party defendant.

Yoro filed an Answer to the Third-Party Complaint[7] dated 13 July 1995. An Amended and Supplemental Complaint[8] dated 30 August 1995 was later filed by the respondent already naming Yoro as a party-defendant, to which the petitioner and Oller filed an Answer.[9] Yoro filed his own Answer.[10]

After four years of hearing the case, the trial court promulgated its Decision[11] holding that the diggings were not intended for the construction of sewerage and septic tanks but were made to construct tunnels to find hidden treasure.[12] The trial court adjudged the petitioner and Yoro solidarily liable to the respondent on a 35%-65% basis (the petitioner liable for the 35%), and absolving Oller from any liability, viz:

WHEREFORE, this Court renders judgment in favor of plaintiff IGLESIA NI CRISTO and against defendants JOHN KAMBIAK CHAN and DIOSCORO "ELY" YORO, JR. who are respectively solidarily liable to

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> PLAINTIFF on a 35%-65% basis, with JOHN CHAN taking the 35% tab, Ordering the two (2) aforesaid DEFENDANTS to pay PLAINTIFF the following amounts:
>
> 1. SIX HUNDRED THIRTY-THREE THOUSAND FIVE HUNDRED NINETY-FIVE PESOS AND FIFTY CENTAVOS (P633,595.50); representing ACTUAL DAMAGES;
>
> 2. FIVE HUNDRED THOUSAND PESOS (P500,000.00) representing MORAL DAMAGES;
>
> 3. TEN MILLION PESOS (P10,000,000.00) as EXEMPLARY DAMAGES;
>
> 4. FIFTY THOUSAND PESOS (P50,000.00) as plaintiff's attorney's fees; and
>
> 5. TWENTY THOUSAND PESOS (P20,000.00) as litigation expenses.
>
> Defendant TEOFILO OLLER is absolved of any civil liability.
>
> Any counterclaim filed against PLAINTIFF IGLESIA NI CRISTO is dismissed.[13]

Petitioner filed a Notice of Appeal[14] dated 18 August 1999. Yoro filed his own Notice of Appeal[15] dated 20 August 1999.

In a Resolution[16] dated 19 November 1999, the trial court disallowed Yoro's appeal for failure to pay the appellate court docket and other lawful fees within the reglementary period for taking an appeal.[17] In view of Yoro's failure to appropriately file an appeal, an order was issued for the issuance of a Writ of Execution as against him only, the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court GRANTS the motion of plaintiff Iglesia ni Cristo for the issuance of a Writ of Execution as against Dioscoro "Ely" Yoro, Jr. only.[18]

The petitioner's appeal to the Court of Appeals, on the other hand, was given due course.[19] On 25 September 2003, the Court of Appeals rendered its Decision denying the appeal. It affirmed the trial court but with modifications. The decretal portion of the decision states:

> WHEREFORE, the appeal is hereby DENIED. The assailed decision in Civil Case No. A-1646 is hereby AFFIRMED with MODIFICATIONS as follows:
>
> (a) The award of moral damages in the amount of P500,000.00 is hereby deleted.
>
> (b) The award of exemplary damages is hereby reduced to P50,000.00.
>
> (c) The award of attorney's fees and litigation expenses is hereby reduced to P30,000.00.[20]

Undeterred, petitioner instituted the instant case before this Court. On 15 December 2004, the instant petition was given due course.[21]

ASSIGNMENT OF ERRORS

Petitioner assigns as errors the following:

> I
>
> THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT (BRANCH 31, AGOO, LA UNION) PARTICULARLY IN SAYING THAT THE BASIS OF THE SOLIDARY OBLIGATION OF PETITIONER AND YORO VIS-À-VIS PLAINTIFF IS BASED NOT ON THE MOA BUT ON TORT
>
> II

> THE COURT OF APPEALS ERRED IN NOT GIVING EFFECT TO THE MOA WHICH SHOULD EXONERATE THE PETITIONER FROM ALL LIABILITIES TO THE PRIVATE RESPONDENT
>
> III
>
> THE COURT OF APPEALS ERRED IN NOT APPRECIATING THE THIRD-PARTY COMPLAINT AS CROSS-CLAIM OF THE PETITIONER AGAINST YORO.[22]

ISSUE

Drawn from the above assignment of errors, the solitary issue that needs to be resolved is:

> WHETHER OR NOT THE MEMORANDUM OF AGREEMENT ENTERED INTO BY THE PETITIONER AND YORO HAS THE EFFECT OF MAKING THE LATTER SOLELY RESPONSIBLE FOR DAMAGES TO THE RESPONDENT.

THE RULINGS OF THE COURT

Petitioner avers that no liability should attach to him by laying the blame solely on Yoro. He argues that the MOA executed between him and Yoro is the law between them and must be given weight by the courts. Since nothing in the MOA goes against the law, morals, good customs and public policy, it must govern to absolve him from any liability.[23] Petitioner relies heavily in Paragraph 4 of the MOA, which is again reproduced hereunder:

> 4. Any damage within or outside the property of the FIRST PARTY incurred during the digging shall be borne by the SECOND PARTY.

In answer to this, the respondent asserts that the MOA should not absolve petitioner from any liability. This written contract, according to the respondent, clearly shows that the intention of the parties therein was to search for hidden treasure. The alleged digging for a septic tank was just a cover-up of their real intention.[24] The aim of the petitioner and Yoro to intrude and surreptitiously hunt for hidden treasure in the respondent's premises should make both parties liable.[25]

At this juncture, it is vital to underscore the findings of the trial court and the Court of Appeals as to what was the real intention of the petitioner and Yoro in undertaking the excavations. The findings of the trial court and the Court of Appeals on this point are in complete unison. Petitioner and Yoro were in quest for hidden treasure[26] and, undoubtedly, they were partners in this endeavor.

The Court of Appeals, in its Decision, held in part:

> The basis of their solidarity is not the Memorandum of Agreement but the fact that they have become joint tortfeasors. There is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.[27]

We find no compelling reason to disturb this particular conclusion reached by the Court of Appeals. The issue, therefore, must be ruled in the negative.

Article 2176 of the New Civil Code provides:

> ART. 2176. - Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Based on this provision of law, the requisites of quasi-delict are the following:

(a) there must be an act or omission;

(b) such act or omission causes damage to another;

(c) such act or commission is caused by fault or negligence; and

(d) there is no pre-existing contractual relation between the parties.

All the requisites are attendant in the instant case. The tortious act was the excavation which caused damage to the respondent because it was done surreptitiously within its premises and it may have affected the foundation of the chapel. The excavation on respondent's premises was caused by fault. Finally, there was no pre-existing contractual relation between the petitioner and Yoro on the one hand, and the respondent on the other.

For the damage caused to respondent, petitioner and Yoro are jointly liable as they are joint tortfeasors. Verily, the responsibility of two or more persons who are liable for a quasi-delict is solidary.[28]

The heavy reliance of petitioner in paragraph 4 of the MOA cited earlier cannot steer him clear of any liability.

As a general rule, joint tortfeasors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit.[29]

Indubitably, petitioner and Yoro cooperated in committing the tort. They even had provisions in their MOA as to how they would divide the treasure if any is found within or outside petitioner's property line. Thus, the MOA, instead of exculpating petitioner from liability, is the very noose that insures that he be so declared as liable.

Besides, petitioner cannot claim that he did not know that the excavation traversed the respondent's property. In fact, he had two (2) of his employees actually observe the diggings, his security guard and his engineer Teofilo Oller.[30]

Coming now to the matter on damages, the respondent questions the drastic reduction of the exemplary damages awarded to it. It may be recalled that the trial court awarded exemplary damages in the amount of P10,000,000.00 but same was reduced by the Court of Appeals to P50,000.00.

Exemplary or corrective damages are imposed by way of example or correction for the public good.[31] In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.[32] By gross negligence is meant such entire want of care as to raise a presumption that the person in fault is conscious of the probable consequences of carelessness, and is indifferent, or worse, to the danger of injury to person or property of others.[33]

Surreptitiously digging under the respondent's chapel which may weaken the foundation thereof, thereby endangering the lives and limbs of the people in worship, unquestionably amounts to gross negligence. Not to mention the damage that may be caused to the structure itself. The respondent may indeed be awarded exemplary damages.

For such tortious act done with gross negligence, the Court feels that the amount awarded by the Court of Appeals is inadequate. The exemplary damages must correspondingly be increased to P100,000.00.

The modification made by this Court to the judgment of the Court of Appeals must operate as against Yoro, for as fittingly held by the court a quo:

> While it is settled that a party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from, nevertheless, when the rights and liability of the defendants are so

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> interwoven and dependent as to be inseparable, in which case, the modification of the appealed judgment in favor of appellant operates as a modification to Gen. Yoro who did not appeal. In this case, the liabilities of Gen. Yoro and appellant being solidary, the above exception applies.[34]

WHEREFORE, the Decision of the Court of Appeals dated 25 September 2003 is AFFIRMED with MODIFICATION as to the award of exemplary damages, which is hereby increased to P100,000.00. Costs against petitioner.

SO ORDERED.

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

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[1]Rollo, pp. 13-27.

[2] Rollo, pp. 29-37; Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Roberto A. Barrios and Arsenio J. Magpale, concurring.

[3] Rollo, pp. 44-45.

[4]Rollo, pp. 44-45.

[5]Records, pp. 1-5.

[6] Records, pp. 8-10.

[7]Records, pp. 35-37.

[8] Records, pp. 53-56.

[9]Records, pp. 97-99.

[10] Records, pp. 116-117.

[11]Records, pp. 364-432.

[12]Records, p. 398.

[13]Records, pp. 430-432.

[14] Records, pp. 440-441.

[15]Records, p. 442.

[16]Rollo, pp. 46-60.

[17] Rollo, p. 59.

[18]Rollo, p. 60.

[19] Ibid.

[20] Rollo, p. 36.

[21]Rollo, p. 103.

[22] Rollo, p. 19.

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[23] Rollo, pp. 20-21.

[24] Rollo, p. 84.

[25] Rollo, p. 87.

[26]CA Rollo, pp. 72 and 148.

[27] CA Rollo, p. 151.

[28] Article 2194, New Civil Code.

[29]Worcester v. Ocampo, 22 Phil. 42 (1912), citing Cooley on Torts, 133; Moir v. Hopkins, 16 Ill., 313 (63 Am. Dec., 312 and note); Berry v. Fletch, 1st Dill., 67; Smithwick v. Ward, 7 Jones L. 64; Smith v. Felt, 50 Barb. (N.Y.), 612; Shephard v. McQuilkin, 2 W. Va., 90; Lewis v. Johns, 34 Cal., 269.

[30] CA Decision, p. 5.

[31] Article 2229, New Civil Code.

[32] Article 2231, New Civil Code.

[33] Amadeo v. Rio y Olabarrieta, Inc., 95 Phil. 33, citing Wall v. Cameron [1882] 6 Colo., 275.

[34]Rollo, p. 47; citing Buot v. Court of Appeals, G.R. No. 119679, 18 May 2001, 357 SCRA 846 and Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 84588, 29 May 1991, 197 SCRA 663.

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