

ANTONIO DIAZ, PETITIONER, VS. DAVAO LIGHT AND POWER CO., INC., MANUEL M. ORIG PROMULGATED: AND ELISEO R. BRAGANZA, JR., RESPONDENTS.

G.R. NO. 160959. April 04, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 68709, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Davao City, Branch 11, in Civil Case No. 21,655-92.

Antecedents

Antonio G. Diaz was the president of Diaz and Co., Inc. He was also vice-president of Diaz Realty Inc. which, in turn, owned the Doña Segunda Hotel,[3] formerly known as the Davao Imperial Hotel (Imperial Hotel Building),[4] located along C.M. Recto Avenue, Davao City. Davao Light and Power Co., Inc. (DLPC), on the other hand, is a public utility duly franchised to provide light, heat and power to its customers in Davao City and the municipalities of Panabo, Santo Tomas and Carmen, in Davao del Norte.[5] Manuel Orig was the resident manager/vice-president for Administration of DLPC,[6] while Eliseo R. Braganza was its in-house lawyer.[7] DLPC supplied the Doña Segunda Building (Imperial Hotel Building) with electricity service[8] under Account No. 087-10669 and with Meter No. 36510.[9]

On July 25, 1983, DLPC sent a Notice of Disconnection[10] to Diaz and Co., Inc. informing it that, as of June 13, 1983, the hotel's unpaid electric consumption bill amounted to P190,111.02.[11] It also warned that if the amount was not paid, DLPC would be impelled to discontinue its service. Since Diaz and Co., Inc. ignored the letter, Meter No. 36510 was disconnected on July 29, 1983.[12]

DLPC then filed a complaint for collection before the RTC, Cebu City, which case was docketed as Civil Case No. CEB-1049.

Meanwhile, in 1984, the National Food Authority (NFA) established its KADIWA[13] store at C.M. Recto Avenue, Davao City.[14] It leased a portion of the ground floor of the Imperial Hotel Building from Diaz and Co., Inc.[15] NFA/KADIWA also applied for electricity service with DLPC, and a contract[16] was later executed between the parties. On March 15, 1984, DLPC connected the area leased by NFA/KADIWA to its electric grid[17] under Account No. 091-12643,[18] and installed Meter No. 84738[19] to measure NFA/KADIWA's monthly electric consumption.

In August 1986, the Kadiwa Center IV closed, and NFA/KADIWA vacated the Doña Segunda Building.[20] In a letter[21] dated August 11, 1986, NFA/KADIWA Provincial Manager, Roberta R. Melendres, informed DLPC that the light and power connection of NFA/KADIWA would be left behind; its right to the connection would be transferred to Diaz.[22] She also informed DLPC that the P1,020.00 deposit of NFA/KADIWA for the power

connection had been refunded to it by Diaz.[23]

In a letter[24] dated September 2, 1986, Diaz informed respondent Manuel Orig that he had leased the untenanted portions of the Doña Segunda Building from Diaz and Co., Inc., and requested that a new electrical connection for the building in his name be installed, separate from the one assigned to him by NFA.[25]

On September 15, 1986, DLPC denied the request on the ground that since Diaz and Co., Inc. is a closed family corporation whose stockholders are the immediate members of the Diaz family, the lease in favor of Diaz could be simulated.[26] DLPC, however, reminded Diaz that it would be too happy to grant his request "if he and/or Diaz and Co., Inc. would pay what is due and owing to it." [27]

Diaz and Co., Inc. sent a letter[28] to DLPC dated September 17, 1986 declaring that it had assumed the electrical bills of NFA/KADIWA under Account No. 091-12643, and requested that the monthly bills/statements be sent to it. In its reply, DLPC rejected the request and declared that it was not aware that Diaz and Co., Inc. had refunded the NFA/KADIWA its P1,020.00 deposit.[29]

On September 26, 1986, Diaz filed a petition for mandamus[30] before the RTC, Davao City. He alleged that as a holder of a certificate of public convenience, DLPC is mandated by law to provide him with electric service; the grounds relied upon by respondent Orig in denying his application are anchored on bias and prejudice, since he (Diaz) is one of the stockholders of Diaz and Co. Inc., the owner of the Davao Imperial Hotel; and the civil case filed by DLPC is against Diaz and Co., Inc. and not personally against him.[31] The complaint was docketed as Civil Case No. 18,288.

Meanwhile, on September 23, 1986, the portion of the building formerly leased by NFA/KADIWA was leased to Matias Mendiola.[32] Because he needed more electricity than what could be provided by the existing electrical wirings, Mendiola opted to change the electrical installation from a one-phase meter to a three-phase meter connection.[33] Mendiola's application was approved by DLPC. On December 19, 1986, DLPC and Mendiola executed a service Contract[34] for electricity service.

On January 7, 1987, Diaz filed an application for preliminary injunction in Sp. Civil Case No. 18,288[35] to enjoin DLPC from disconnecting the electric connections to Meter No. 84738 under Account No. 091-12643. Also, an Inter-Office Memo[36] dated January 7, 1987, signed by Officer-in-Charge, Rebecca Madrid, was issued to all security guards of the Doña Segunda Building who were ordered to prevent anyone from disturbing Meter No. 84738.[37] Because of this, DLPC failed to substitute its single-phase meter with a three-phase meter. DLPC's linemen thus installed the three-phase meter without removing the single-phase meter.[38]

On March 12, 1987, the RTC in Sp. Civil Case No. 18,288, denied the motion for issuance of a writ of preliminary injunction[39] filed by Diaz. He moved for a reconsideration, which was, however, denied in the Order[40] dated August 20, 1987. DLPC then removed its single-phase meter on November 20, 1987, which rendered almost half of the building without power.[41] That same day, Diaz went to the DLPC building and threw stones at it, breaking four glass windows in the process.[42] He then bought his own electric meter, Meter No. 86673509,[43] had it calibrated by the Board of Energy, and unilaterally replaced Meter No. 84738. The electricity in the building was then restored.[44]

On November 24, 1987, Diaz filed a Complaint for Damages with Prayer for Preliminary Prohibitory and Mandatory Injunction and Restraining Order[45] before the RTC, Davao City, docketed as Civil Case No. 18,855-87. In the said complaint, Diaz claimed that DLPC arbitrarily and illegally removed Meter No. 84738 in violation of their business franchise and Article 19 of the New Civil Code, and had threatened to remove Meter No. 86673509.[46]

DLPC, for its part, filed a counter-application for preliminary mandatory injunction[47] in the same case to compel the removal of Meter No. 86673509 which Diaz had installed without DLPC's consent and authority.[48] The RTC issued an Order[49] dated March 30, 1988 denying Diaz's application for prohibitory and mandatory injunction, and granting DLPC's counter-application for preliminary mandatory injunction. The RTC ordered Diaz to immediately remove Meter No. 86673509 and disconnect the electrical wirings he had unilaterally connected to the upper floor rooms. Diaz filed a motion for reconsideration but was denied. On June 13, 1998, the sheriff, with the aid of DLPC personnel, caused the removal of Meter No. 86673509.[50]

Aggrieved, Diaz assailed the orders via petition for certiorari before the CA. The petition was docketed as CA-G.R. SP No. 14909. On October 19, 1988, the CA rendered a Decision[51] granting Diaz's petition, to wit:

Wherefore, in view of the foregoing, the petition is hereby granted and the orders of the lower court dated March 30, 1988 and June 1, 1988 are set aside. Private respondents are thus ordered to maintain the status quo ante which existed before the issuance of the orders complained against, or else to connect its own electric meter to the premises, on the understanding, of course, that petitioner pays his electric bills and without prejudice to the continuance of the collection case against Diaz and Company.[52]

DLPC elevated the decision before this Court, via petition for review on certiorari. The petition was docketed as G.R. No. 85445.[53]

Meanwhile, on December 19, 1998, the parties in Civil Case No. CEB-1049[54] executed a Compromise Agreement,[55] wherein they stipulated the following:

- Plaintiff-appellee hereby reduces its total claims in the complaint to only P385,000.00 and further waives any claim in excess of said amount in the same case, and the defendant-appellant shall pay said amount in full immediately upon the execution of this agreement. The latter also waives its counterclaims against the former in the above-entitled case.
- Upon receipt of the payment of the aforesaid sum, plaintiff-appellee shall immediately grant and install in favor of defendant-appellant or Antonio G. Diaz electric service for the Doña Segunda Building, popularly known as Imperial Hotel Building, or for portions thereof designated by either including the tenants or lessees occupying the same, upon proper application therefor and the presentation of the requisite electrical permit.
- the parties agree to the dismissal of Civil Case No. 18,288 of the Regional Trial Court of Davao City, pending in Branch XVI thereof, entitled "Diaz vs. Davao Light & Power Co., Inc. and Manuel Orig." for Mandamus inclusive of the counter-claim therein, the same having become moot and academic.

WHEREFORE, it is most respectfully prayed that this Honorable Court approves the foregoing compromise agreement and render judgment based thereon, and enjoin the parties to comply strictly with the terms thereof.

The RTC, in Civil Case No. CEB-1049, rendered a Decision[56] approving the compromise on January 5, 1989.

In Sp. Civil Case No. 18,288, the parties also filed a Joint Motion to Dismiss[57] based on the Compromise Agreement, and the RTC thereafter ordered the dismissal of the case.[58]

On April 17, 1989, this Court in G.R. No. 85445, issued a Resolution,[59] denying the petition for review on certiorari questioning the CA decision in CA-G.R. SP No. 14909 for being moot and academic. The resolution reads:

After deliberating on the allegations made, the issues raised, and the arguments advanced in the Petition, the Comment and the Reply, and it appearing that petitioner is now providing electrical service to private respondent's entire building, the Court RESOLVED to DENY the petition for having become moot and academic. The Court makes the admonition, however, that connections of electrical service and installations of

electric meters should always be upon mutual contract of the parties, and that payments for electrical consumption should also be made promptly whenever due. Contracts lay down the law between the parties and obligations arising therefrom should be complied with.

Meanwhile, on June 30, 1997, the RTC rendered a Decision[60] in Civil Case No. 18,855-87 dismissing the case filed by Diaz.[61]

Diaz appealed the decision with the CA in CA-G.R. CV No. 63236,[62] which appeal is still pending before the appellate court.

Based on the aforestated facts, on July 11, 1988, DLPC filed a complaint for theft of electricity against Diaz with the City Prosecutor's Office, Davao City; respondent Braganza submitted an Affidavit[63] to support the charge. In defense, Diaz alleged the following: (1) that the complaint was intended to harass him; (2) he was entitled to electric service by virtue of his subrogation to the right of NFA/KADIWA; (3) the installation of Meter No. 86673509 was made with the knowledge and consent of DLPC; (4) there is a pending case between the parties regarding Meter Nos. 84738 and 86673509; and (5) the filing of the action is premature. The complaint was docketed as I.S. No. 593.

On March 21, 1989, Lolito O. Evangelino, 4th Asst. City Prosecutor, City Prosecutor's Office of Davao City, issued a Resolution[64] recommending the dismissal of the charge. He opined that the correspondence to DLPC Manager Orig negated DLPC's claim of lack of consent and knowledge, and since the issue is still pending litigation in court, the determination of whether there is theft of electricity is premature (Sp. Civil Case No. 18288 and Civil Case No. 18,855-87).

DLPC filed a Motion for Reconsideration[65] which the City Prosecutor denied on the ground that DLPC failed to establish the elements of unlawful taking and intent to gain. DLPC appealed the dismissal to the Secretary of Justice,[66] who, however, dismissed the appeal in a letter[67] dated August 2, 1990. The Motion for Reconsideration[68] filed by DLPC was likewise denied in the letter[69] dated September 6, 1990.

Undaunted, DLPC filed a criminal complaint[70] against Diaz for Violation of P.D. 401,[71] as amended by B.P. Blg. 876[72] with the City Prosecutor's Office, Davao City.[73] The complaint was docketed as I.S. No. 92-4590. In his counter-affidavit dated September 19, 1992, Diaz alleged that a similar complaint (I.S. No. 593) had been filed by DLPC against him.[74] In a Resolution[75] dated October 23, 1992, Calixto A. Esparagoza, 2nd Asst. City Prosecutor, dismissed the case. The Public Prosecutor likewise denied the motion for reconsideration of DLPC on November 26, 1992.

Meanwhile Diaz, Ramos, and Arguellas, as complainants, filed a criminal complaint with the Office of the Provincial Fiscal of Davao del Norte charging the officers of DLPC with estafa through falsification of public documents. They also alleged that the officers of DLPC exacted additional and illegal profits from its consumers by devising a deceptive Varying Discount Formula; based on the alleged misrepresentation of said officers, the Board of Energy (BOE) granted DLPC provisional authority to apply the formula, thereby resulting in losses of more or less P300,000.00 to Diaz, Ramos, and Arguelles.[76] As regards the charge of falsification, the complainants alleged that DLPC had its properties appraised by the Technical Management Services, Philippines, Inc. (TAMSPHIL), and included non-existent properties that did not belong to it; it also recorded the TAMSPHIL appraisal in its books of account even before it had been approved by the BOE; and submitted financial statements containing the appraisal to the Securities and Exchange Commission and the BOE.[77]

The Investigating Prosecutor found probable cause against the respondents. An Information was filed before the then Court of First Instance (CFI) of Tagum, Davao del Norte, docketed as Crim. Case No. 5800. Respondents appealed the resolution of the public prosecutor finding probable cause against them. The appeal was granted. On

motion of the Prosecutor, the RTC dismissed the case in an Order dated July 13, 1983.[78]

On August 9, 1983, the officers of DLPC, Eduardo J. Aboitiz, Luis Aboitiz, Jr., Roberto E. Aboitiz, Jon R. Aboitiz, and Edson H. Canova, as plaintiffs, filed a Complaint against Diaz, Isagani T. Fuentes (Provincial Fiscal of Davao del Norte), Petronilo D. Ramos (Municipal Mayor of Carmen, Davao del Norte), Gabriel Arguelles (Municipal Attorney of Panabo, Davao del Norte) before the RTC, Cebu City, for damages and attorney's fees against the defendants for malicious prosecution.[79]

The case was docketed as CEB Case No. 1055. After trial on the merits, the RTC rendered a Decision[80] on April 30, 1992, dismissing the complaint. The fallo of the decision reads:

WHEREFORE, premises considered, plaintiffs' complaint and defendants' counterclaim are hereby DISMISSED for lack of cause of action with costs de oficio.

SO ORDERED.[81]

Both parties appealed the decision before the CA, docketed as CA-G.R. CV No. 41399.

Diaz, et al. relied on the following grounds:

I

TRIAL COURT ERRED IN IGNORING PLAINTIFF-APPELLANT'S (SIC) EVIDENCE OF CONSPIRACY AMONG ALL DEFENDANT-APPELLANTS (SIC) AND IN MAKING NO FINDING THAT THERE WAS A CONSPIRACY TO PROSECUTE PLAINTIFF-APPELLANTS (SIC) CRIMINALLY FOR USE AS LEVERAGE IN ORDER TO OBTAIN CONCESSIONS FROM DAVAO LIGHT & POWER CO.

II

TRIAL COURT ERRED IN HOLDING THAT PLAINTIFF-APPELLANTS (SIC) HAVE NO CAUSE OF ACTION BY COMMITTING THE FOLLOWING ERRORS:

(a) IN FINDING THAT THERE WAS NO PROSECUTION AND NO ACQUITTAL;

(b) IN FINDING THAT THERE WAS PROBABLE CAUSE FOR DEFENDANT-APPELLANT'S (SIC) CHARGE OF ESTAFA THROUGH FALSIFICATION;

(c) BY IGNORING THE FACT THAT THERE WAS NO EVIDENCE LINKING PLAINTIFF-APPELLANTS (SIC) TO THE CRIME CHARGED;

(d) BY IGNORING THE CIRCUMSTANCES THAT MANY ALLEGATIONS IN THE JOINT AFFIDAVIT OF DEFENDANT-APPELLANTS (SIC) ARE INADMISSIBLE;

(e) BY IGNORING THE FACT THAT DAVAO LIGHT'S USE OF THE VARYING DISCOUNT FORMULA WAS ADMITTEDLY PROVISIONALLY AUTHORIZED BY THE BOE WHICH AUTHORITY WAS IN FORCE DURING THE FILING AND PENDENCY OF THE CHARGE;

(f) BY IGNORING THE FACT THAT THE VARYING DISCOUNT FORMULA WAS A FORMULA TO DETERMINE THE AMOUNT OF DISCOUNT DEDUCTIBLE FROM THE RATES EARLIER FIXED BY THE BOE RESULTING FROM THE COST SAVINGS REALIZABLE FROM THE CHEAPER COST OF ELECTRIC POWER SOLD BY NPC TO DAVAO LIGHT, AND ITS NEGATIVE ASPECT WAS MERELY AN INCORPORATION INTO SAID FORMULA OF THE FUEL CLAUSE ADJUSTMENT ALREADY AUTHORIZED IN THE DECISION OF SAID BOARD IN CASE NO. 73-146;

(g) BY BEING OBLIVIOUS OF THE CIRCUMSTANCE THAT THERE WAS NO FRAUD OR DECEIT IN SECURING SAID PROVISIONAL AUTHORITY, AND THE BOARD MADE NO SUCH FINDING;

(h) BY IGNORING THE UNREBUTTED EVIDENCE THAT APPELLANT FUENTES DISOBEYED THE DIRECTIVE OF HIS SUPERIOR, THE CHIEF STATE PROSECUTOR TO HOLD IN ABEYANCE FURTHER PROCEEDINGS IN I.S. NO. 82-115, AND THAT HE FILED AN INFORMATION CHARGING PLAINTIFF-APPELLANTS (SIC) WITH AN OFFENSE DIFFERENT FROM THAT SUBJECT OF HIS PRELIMINARY INVESTIGATION;

(i) IN FINDING THAT DEFENDANT-APPELLANTS (SIC) DID NOT ACT WITH MALICE AND HAD ACTED IN GOOD FAITH IN FILING SAID CHARGE.

III

TRIAL COURT ERRED IN NOT AWARDING DAMAGES TO PLAINTIFF-APPELLANTS (SIC).[82]

For their part, DLPC, et al. alleged the following:

I

THAT THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANTS APPELLANTS' COUNTERCLAIMS HAVE NO CAUSE OF ACTION.

II

THAT THE TRIAL COURT ERRED IN NOT AWARDING DAMAGES AND ATTORNEY'S FEES.[83]

On October 30, 2001, the CA rendered a Decision[84] affirming the decision of the RTC.

Diaz, et al. appealed the decision before this Court, docketed as G.R. No. 154378. On November 13, 2002, this Court resolved to dismiss the petition for lack of merit.[85] On April 15, 2003, as per Entry of Judgment,[86] the resolution of this Court became final and executory.

On June 10, 1992, DLPC instituted a civil action for Damages,[87] before the RTC, Cebu City, against Diaz for defamatory and libelous remarks and for abuse of rights. The plaintiff alleged that Diaz, motivated by malice and ill-will, had taken it upon himself to find fault in DLPC's acts and oppose all its application with the BOE, using the media to assault its good name by circulating or publishing libelous and false statements in the newspapers. The case was docketed as Civil Case No. CEB-11843.

DLPC further alleged that Diaz published and disseminated a handbill claiming that there was something irregular and anomalous regarding the Energy Regulation Board's approval of the appraisal of the properties and equipment of DLPC, because of which the customers of DLPC could expect a P5.00 per kilowatt charge in the future. Diaz allegedly gave identical interviews with the Mindanao Daily Mirror and the Ang Peryodiko Dabaw reiterating what he said in the handbill.[88] In addition, Diaz, in an interview with the People's Daily Forum, claimed that the National Power Corporation sold two (2) generating sets to DLPC for only P1.00 each.[89] Consequently, DLPC suffered besmirched reputation and public humiliation, and damage to its business standing. The complaint contained the following prayer:

- 1) Immediately issue a temporary restraining order ex-parte precluding defendant from committing further acts of tort or libel against plaintiff, and after the hearing of plaintiff's application for preliminary injunction, issue such writ after posting of the required injunction bond;
- 2) After trial, render judgment in favor of plaintiff and against defendant Antonio Diaz making the injunction permanent, and ordering the latter to pay the former —
 - a) The sum of P10,000,000.00 as moral damages and damages to its business standing;

- b) The sum of P300,000.00 as exemplary damages;
- c) The sum of P500,000.00 as attorney's fees and expenses of litigation;
- d) The cost of suit.[90]

After trial, the RTC in Civil Case No. CEB-11843 rendered a Decision[91] in favor of DLPC and against Diaz, awarding more than P1,500,000.00 in damages to DLPC and dismissing the counterclaim of Diaz. The decretal portion reads:

WHEREFORE, premises above set-forth, the Court hereby renders judgment in favor of plaintiff Davao Light & Power Co., Inc. and against defendant Antonio Diaz ordering said defendant:

- To pay plaintiff the amount of P1,500,000.00 by way of moral damages for besmirched reputation, loss of business standing and goodwill;
- To pay plaintiff the amount of P300,000.00 in exemplary damages by way of example or correction for the public good; and
- To pay plaintiff the amount of P500,000.00 in attorney's fees and litigation expenses and to pay the costs.

Defendant takes nothing from his counterclaim.

SO ORDERED.[92]

Both parties appealed the decision to the CA in CA-G.R. CV No. 65082, which appeal is still pending.

On October 30, 1992, Diaz, as plaintiff, filed a complaint for Damages, Injunction with Writ of Preliminary Injunction and Temporary Restraining Order, Plus Attorney's Fee[93] against DLPC before the RTC, Davao City; the case was docketed as Civil Case No. 21,655-92. Diaz alleged that DLPC's filing of criminal cases, I. S. No. 593 for theft of electricity and I.S. No. 92-4590 for violation of P.D. 401, as amended by B.P. Blg. 876), were intended to harass and humiliate him before the public and government authorities and ruin his image;[94] he was seriously prejudiced by the filing of an P11.6 Million damage suit in Civil Case No. CEB-1055 and a P10.8 Million damage suit in Civil Case No. CEB-11843;[95] defendants, by their common and joint acts, were motivated by evident bad faith and intentionally caused injustice to his person in violation of Article 19 of the New Civil Code.[96] Diaz thus prayed:

WHEREFORE, and in view of the foregoing, it is most respectfully prayed of the Honorable Court:

- a) Before notice and hearing to issue a temporary restraining order enjoining defendants from committing any unlawful, illegal, tortious (sic) and inequitable act which may affect the individual rights of plaintiff, and after hearing to issue writ of preliminary injunction for the same purpose upon posting of the bond;
- b) After trial on the merits, to make the writ of injunction as permanent;
- c) To order defendants to pay plaintiff, jointly and severally, moral damages in the amount of P10,000,000.00, attorney's fee in the amount of P500,000.00, litigation expenses in the amount of P100,000.00 and exemplary damage in the amount of P100,000.00; and,
- d) To grant to plaintiff such other relief proper and equitable under the premises.[97]

On November 4, 1992, the RTC issued a TRO[98] in favor of Diaz, directing DLPC or any person acting for and in its behalf, to desist and refrain from committing any unlawful, tortuous and inequitable conduct which may affect the former for a period of twenty (20) days.

During the pre-trial, the parties limited the issue to "whether or not the plaintiff is entitled to damages by virtue of the filing of the criminal cases against him for theft of electricity and violation of P.D. 401, both of which were

already dismissed." Due to the pendency of various actions before several courts, the trial court opted to segregate the issues. It focused only on the alleged malicious prosecution with regard to the filing of the criminal action for theft, I. S. No. 593, and for Violation of P.D. 401, as amended by B.P. Blg. 876, I.S. No. 92-4590. The RTC reasoned in this wise:

The records show that plaintiff's first cause of action, which is damages for defendant's refusal to grant him electric service, has become moot and academic by virtue of the compromise agreement executed by the plaintiff and the defendant in the mandamus case docketed as Civil Case No. 18288 of this Court. The parties filed a Joint Motion to Dismiss based on the Compromise Agreement which was granted by this Court and which led to the eventual dismissal of the case with prejudice.

In summary, plaintiff asks for damages for defendant's alleged malicious prosecution of a criminal case of theft of electricity against him, for plaintiff's filing of a charge of violation of P.D. 401 as amended after dismissal of the theft case, the filing of a damage suit against him before the RTC of Cebu City which was dismissed and the filing of another damage suit before the same Cebu RTC which is still pending. Damages are also being sought for defendant's removal of Electric Meter No. 847328 (sic). But this is a subject matter of a case pending before Branch 13 of this Court and therefore said court retains jurisdiction over the said cause of action. x x x[99]

On May 22, 2000, the RTC rendered a Decision[100] dismissing the complaint. The fallo reads:

In view of all the foregoing, finding no merit in plaintiff's complaint, judgment is hereby rendered dismissing said complaint with costs de oficio.

SO ORDERED.[101]

The RTC held that while the City Prosecutor, and later the Secretary of Justice, concluded that there was no probable cause for the crime of theft, this did not change the fact that plaintiff made an illegal connection for electricity.[102] A person's right to litigate should not be penalized by holding him liable for damages.

Diaz appealed the decision to the CA, alleging that:

I - THE TRIAL COURT ERRED IN HOLDING THAT "WHEN THE DEFENDANTS FILED THE CASES OF THEFT, THEY DID SO IN HONEST BELIEF THAT PLAINTIFF IS CRIMINALLY LIABLE".

II - THE TRIAL COURT ERRED IN DISMISSING THE CASE AT BAR AND WITHOUT GRANTING THE AWARD OF DAMAGES.[103]

On October 1, 2003, the CA affirmed the decision of the RTC.[104] It concluded that the evidence on hand showed good faith on the part of DLPC in filing the subject complaints. It pointed out that Diaz had been using the electrical services of DLPC without its consent. As to the effect of the compromise agreement, the CA ruled that it did not bar the filing of the criminal action. Thus, under the principle of *damnum absque injuria*, the legitimate exercise of a person's right, even if it causes loss to another, does not automatically result in an actionable injury.[105]

Diaz, now petitioner, comes before this Court in this petition for review on certiorari, raising the following errors:

a) "Proof of moral suffering must be introduced, otherwise the award of moral damage is not proper. In this case, the evidence presented by the appellant is insufficient to overcome the presumption of good faith." (Decision, p. 10)

b) "In view of the foregoing, it is clear that the subject complaints were filed so as to protect appellee DLPC's interest. In this regard, it must be borne in mind that no person should be penalized for the exercise of the right to litigate." (Decision, p. 12)[106]

The issues raised in the present action can be summarized as follows: (1) whether or not the compromise agreement entered into between DLPC and Diaz barred the former from instituting further actions involving electric Meter No. 84736 or 86673509; (2) whether or not DLPC acted in bad faith in instituting the criminal cases against Diaz; and (3) whether or not Diaz is entitled to damages.

The petition is without merit.

Petitioner insists that the compromise agreement as well as the decision of the CA in CA-G.R. SP No. 14909 already settled the controversies between them; yet, DLPC instituted the theft case against Diaz, and worse, instituted another action for violation of P.D. 401, as amended by B.P. Blg. 876. Thus, the only conclusion that can be inferred from the acts of DLPC is that they were designed to harass, embarrass, prejudice, and ruin him. He further avers that the compromise agreement in Civil Case No. CEB-1049 completely erased litigious matters that could necessarily arise out of either Electric Meter No. 84736 or 86673509.[107] Moreover, Diaz asserts that the evidence he presented is sufficient to prove the damages he suffered by reason of the malicious institution of the criminal cases.

We do not agree.

Article 2028 of the Civil Code defines a compromise as a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. The purpose of compromise is to settle the claims of the parties and bar all future disputes and controversies. However, criminal liability is not affected by compromise for it is a public offense which must be prosecuted and punished by the Government on its own motion, though complete reparation should have been made of the damages suffered by the offended party. A criminal case is committed against the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.[108] Moreover, a compromise is not one of the grounds prescribed by the Revised Penal Code for the extinction of criminal liability.[109]

As can be inferred from the compromise agreement, Diaz and DLPC merely agreed to (1) reduce the latter's total claims to only P385,000.00; (2) for DLPC to waive its counterclaims against Diaz; and (3) upon receipt of the amount, for DLPC to immediately install the necessary electric service to the building. The parties likewise agreed to the dismissal of Sp. Civil Case No. 18,288 for being moot and academic. Nowhere in said agreement did the parties agree that DLPC was barred from instituting any further action involving electric Meter No. 84736 or 86673509.

We find that petitioner is not entitled to damages under Articles 19,[110] 20[111] and 21,[112] and Articles 2217[113] and 2219(8)[114] of the New Civil Code.

The elements of abuse of rights are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[115] Thus, malice or bad faith is at the core of the above provisions.[116] Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another.[117] Good faith is presumed and he who alleges bad faith has the duty to prove the same.[118] Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill-will that partakes of the nature of fraud. Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. [119]

The evidence presented by respondents negates malice or bad faith. Petitioner himself alleged in his complaint that he unilaterally installed Meter No. 86673509 to replace Meter No. 84738 after it was removed by DLPC. No

less than this Court, in G.R. No. 85445, admonished petitioner and reminded him that connections of electrical service and installations of electric meters should always be upon mutual contract of the parties, and that payments for electrical consumption should also be made promptly whenever due.[120] Based on these established facts, petitioner has not shown that the acts of respondent were done with the sole intent of prejudicing and injuring him.

Petitioner may have suffered damages as a result of the filing of the complaints. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone; the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*. [121] Whatever damages Diaz may have suffered would have to be borne by him alone since it was his acts which led to the filing of the complaints against him.

On the other hand, malicious prosecution has been defined as an action for damages brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein.[122] It is an established rule that in order for malicious prosecution to prosper, the following requisites must be proven by petitioner: (1) the fact of prosecution and the further fact that the defendant (respondent) was himself the prosecutor, and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is, by improper or sinister motive.[123] The foregoing are necessary to preserve a person's right to litigate which may be emasculated by the undue filing of malicious prosecution cases.[124] From the foregoing requirements, it can be inferred that malice and want of probable cause must both be clearly established to justify an award of damages based on malicious prosecution.[125]

The Court notes that respondents initiated two separate criminal actions, one for theft of electricity, Inv. Sheet No. 593 July/1988, and the other, for Violation of P.D. 401, as amended by B.P. Blg. 876, I.S. No. 92-4590. It must be stressed that theft of electricity is a felony defined and penalized under the Revised Penal Code, while Violation of P.D. 401, as amended by B.P. Blg. 876, is an offense punished by a special law. What generally makes the former a felony is criminal intent (*dolo*) or negligence (*culpa*); what makes the latter a crime is the special law enacting it.[126] In addition, the elements of the two (2) offenses are different from one another. In theft, the elements are: (1) intent to gain; (2) unlawful taking; (3) personal property belonging to another; (4) and absence of violence or intimidation against persons or force upon things.[127] On the other hand, the crime of Violation of P.D. 401, as amended by B.P. Blg. 876, is *mala prohibita*. The criminal act is not inherently immoral but becomes punishable only because the law says it is forbidden. With these crimes, the sole issue is whether the law has been violated. Criminal intent is not necessary.[128]

While the institution of separate criminal actions under the provisions of P.D. 401, as amended by B.P. Blg. 876, and under the provisions of the Revised Penal Code on theft may refer to identical acts committed by petitioner, the prosecution thereof cannot be limited to one offense because a single criminal act may give rise to a multiplicity of offenses; and where there is variance or difference between the elements of an offense in one law and another law, as in the case at bar, there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two (2) offenses. Otherwise stated, prosecution for the same act is not prohibited; what is forbidden is prosecution for the same offense.[129] Hence, no fault could be attributed to respondent DLPC when it instituted the two separate actions.

As earlier stated, a claim for damages based on malicious prosecution will prosper only if the three elements aforecited are shown to exist. We find that none of the requisites are attendant here.

First. Although respondent DLPC initiated before the prosecutor's office Inv. Sheet No. 593 July/1988 for theft of electricity, and I.S. No. 92-4590 for Violation of P.D. 401, as amended by B.P. Blg. 876, no information was ever filed in court. The cases were eventually dropped or dismissed before they could be filed in court. Ultimately, both actions could not end in an acquittal.

Second. It cannot be concluded that respondent DLPC acted without probable cause when it instituted the actions. The events which led to the filing of the complaints are undisputed, and respondent DLPC cannot be faulted for filing them. In the early case of *Buchanan v. Esteban*,^[130] this Court had already stressed that "one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause." As Justice Moreland explained in that case:

Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. The general rule is well settled that one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause. In other words, a suit will lie only in cases where a legal prosecution has been carried on without probable cause. And the reason for the rule as stated by Blackstone, is that it would be a very great discouragement to public justice if prosecutors, who had a tolerable ground of suspicion, were liable to be sued at law when their indictments miscarried.

Thus, the element of malice and the absence of probable cause must be proved.^[131] There must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless to entitle the victims to damages.^[132] The two elements must simultaneously exist; otherwise, the presence of probable cause signifies, as a legal consequence, the absence of malice.^[133] In the instant case, it is evident that respondent DLPC was not motivated by malicious intent or by a sinister design to unduly harass petitioner, but only by a well-founded anxiety to protect its rights. Respondent DLPC cannot therefore be faulted in availing of the remedies provided for by law.

In a free society, controversies are heard and settled under the rule of law in the forum of the courts of justice. It is one of the virtues of our system of government that a person who feels aggrieved does not have to take the law into his or her hands or resort to the use of force for the vindication of injury. The courts are there to hear and act on the complaint. The right to litigate is an escape valve to relieve the pressures of personal disagreements that might otherwise explode in physical confrontation. It is necessary not only for upholding one's claims when they are unjustly denied but also for the maintenance of peace, if not goodwill, among incipient antagonists. Without the right to litigate, conflicting claims cannot be examined and resolved in accordance with one of the primary purposes of government, which is to provide for a just and orderly society.^[134] Hence, the mere act of submitting a case to the authorities for prosecution does not render a person liable for malicious prosecution should he or she be unsuccessful, for the law could not have meant to impose a penalty on the right to litigate.^[135]

IN LIGHT OF THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 68709 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim

S. Abdulwahid, concurring; rollo, pp. 30-42.

[2] Rollo, pp. 310-317.

[3] Exhibit "MM," folder of exhibits, pp. 45-46.

[4] Id.

[5] Exhibit "20-A," folder of exhibit, pp. 123-125.

[6] Records, pp. 1-20.

[7] Id. at 57.

[8] Supra note 5.

[9] Folder of Exhibits, p. 126.

[10] Id. at 98.

[11] Supra note 9.

[12] Id.

[13] The Kadiwa stores, popular during the Marcos regime, sold basic commodities at low prices.

[14] Supra note 6.

[15] Id. at 47.

[16] Exhibit "18," folder of exhibits, p. 100.

[17] Id.

[18] Records, p. 21.

[19] Supra note 18.

[20] Supra note 6.

[21] Supra note 20.

[22] Id.

[23] Id.

[24] Id. at 23.

[25] Id.

[26] Id.

[27] Id.

[28] Records, p. 22.

[29] Id. at 776.

[30] Id. at 238-242.

[31] The complaint contained the following prayers:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after due notice and hearing, a Writ of Mandamus be issued, commanding the respondents to:

- (a) Connect the necessary and adequate electrical connections to the leased premises under Annex "A" hereof;
- (b) Pay damages in the amount of P50,000.00 and such other sums as may be proved in the hearing;
- (c) Pay attorney's fees in the amount of P20,000.00, and reimburse the amount of P2,000.00 as initial expenses incurred in the preparation and filing of the petition;

PETITIONER further prays for such other reliefs that may be just, equitable and proper in the premises.

[32] Id. at 774.

[33] Id.

[34] Folder of Exhibits, p. 116.

[35] Supra note 32.

[36] Records, p. 326.

[37] A portion of the note reads: "Nobody should touch the Meter Base of Meter No. 84738, under account No. 091-12643. Show them this Motion for Writ of Preliminary Injunction under Civil Case No. 18, 288. If they do not understand resist force by force.

For strict compliance."

[38] Supra note 32.

[39] Records, pp. 327-329.

[40] Id. at 330-331.

[41] Id. at 42.

[42] Id. at 775.

[43] Id. at 7.

[44] Supra note 41.

[45] Id at 38-45.

[46] The prayer in the complaint states:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court to:

- (a) Forthwith issue a restraining order enjoining the defendants or any of their agents or representatives from molesting further the plaintiff and from removing the electrical installations mentioned in paragraphs 13 and 14 hereof;
- (b) After hearing, to issue a writ of preliminary injunction enjoining the defendants or any of their agents or representatives from molesting further the plaintiff and from removing and/or disconnecting the aforementioned electrical installations; and to issue a writ of mandatory injunction requiring the defendants to reinstall the electric meter which they earlier removed from the establishment of the plaintiff;
- (c) And after trial, to order the defendants, jointly and severally, to pay to plaintiff moral damages in the amount of P500,000.00 and the further sum that this Honorable Court may reasonably fix for exemplary

damages;

(d) Order the defendants, jointly and severally, to reimburse the plaintiff the amount of P3,000.00 for the initial expenses in the preparation and filing of the complaint; and the further sum of P50,000.00 in concept of attorney's fees; and to pay to plaintiff the actual damages in the amount of P2,200.00;

PLAINTIFF further prays for such other reliefs and remedies just and equitable under the premises. (Id. at 44-45)

[47] Id. at 520-531.

[48] Rollo, p. 292.

[49] Id. at 292-302.

[50] Id. at 768-769.

[51] Id. at 46-50.

[52] Id. at 49.

[53] Records, p. 51.

[54] Case for collection of sum of money and damages against Davao and Co., Inc. for the payment of unpaid electric consumption. See notes 13-14.

[55] Records, p. 94.

[56] Id. at 508-509.

[57] Id. at 243.

[58] Id. at 246.

[59] Id. at 57.

[60] Id. at 770-778.

[61] The dispositive portion reads:

Accordingly, the Court finds and so holds that plaintiff had no right at all to have the upper floors of the Imperial Hotel Building and its penthouse on the roof deck serviced by defendant. Likewise, defendant was merely exercising a right when it removed its aforesaid meter on November 20, 1987. Any damage suffered by plaintiff as a result thereof is *damnum absque injuria*.

WHEREFORE, plaintiff's case against defendant is dismissed, with costs against the former.

Defendant's counterclaim are hereby dismissed.

SO ORDERED. (Id. at 778)

[62] Rollo, p. 558.

[63] Id. at 610-613.

[64] Records, pp. 61-63.

[65] Id. at 100-123.

[66] Id. at 124-160.

[67] Id. at 96.

[68] Id. at 161-174.

[69] Id. at 97.

[70] Id. at 98-99.

[71] Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered water or Electrical Meters, and Other Acts.

[72] An Act to include all authorized Water, Gas, Electric, and Telephone Utilities Within the Coverage of Presidential Decree No. 401, as Amended.

[73] Records, p. 886.

[74] CA rollo, p. 287.

[75] Id.

[76] Records, p. 198.

[77] Id. at 199.

[78] Upon a written Motion to Dismiss filed by the prosecution, thru State Prosecutor Estanislao L. Granados, of the Ministry of Justice, on the ground of Lack of Jurisdiction and Insufficiency of Evidence, and considering that the resolution recommending the dismissal of this case was duly approved by Chief State prosecutor Artemio G. Tuquero, the above entitled case is hereby DISMISSED with costs de officio.

Notify the prosecution and the defense thru this Order.

SO ORDERED. (CA rollo, p. 384)

[79] The complaint contained the following prayer:

WHEREFORE, it is most respectfully prayed that this Honorable Court render judgment in favor of plaintiffs and against defendants directing the latter to pay the former jointly and severally:

(1) The sum of P100,000.00 as actual damages consisting of lawyers' fees and expenses incurred in connection with their defense in the criminal case filed against them by defendants;

(2) The sum of P10,000,000.00 as moral damages;

(3) The sum of P1,000,000.00 as exemplary damages;

(4) The sum of P500,000.00 as damages on concept of attorney's fee and expenses of litigation for the filing of this suit to vindicate their rights and to recover their damages; and

(5) The costs of suit. (CA rollo, p. 197)

[80] Id. at 197-209.

[81] Id. at 209.

[82] Rollo, pp. 586-587.

[83] Id. at 588.

[84] Id. at 580-595.

[85] Id. at 606.

[86] Id.

[87] Records, pp. 210-221.

[88] Id. at 212-213.

[89] Id. at. 216.

[90] Id. at 219-220.

[91] CA rollo, pp. 131-145.

[92] Id. at 145.

[93] Supra note 6.

[94] Id. at 9.

[95] Id. at 15.

[96] Id. at 16.

[97] Id. at 19-20.

[98] Id. at 227.

[99] Records, p. 887.

[100] Id. at 883-890.

[101] Id. at 890.

[102] Id. at 889.

[103] CA rollo, p. 33.

[104] Rollo, pp. 30-42.

[105] Id.

[106] Id. at 18.

[107] Id. at 22.

[108] Serrano v. Court of Appeals, G.R. No. 123896, June 25, 2003, 404 SCRA 639, 647

[109] Articles 89 and 94, Revised Penal Code.

[110] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[111] Article 20. Every person who, contrary to law, willfully or negligently caused damage to another, shall indemnify the latter for the same.

[112] Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

[113] Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[114] Article 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(8) Malicious prosecution.

[115] Hongkong and Shanghai Banking Corporation, Limited v. Catalan, G.R. No. 159591, October 18, 2004, 440 SCRA 498, 511-512; Saber v. Court of Appeals, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278.

[116] Saber v. Court of Appeals, *supra*.

[117] *Id.*

[118] *Id.*

[119] *Id.* at 278-279.

[120] *Supra* note 61.

[121] Far East Bank and Trust Company v. Pacilan, Jr., G.R. No. 157314, July 29, 2005, 465 SCRA 372, 384-385.

[122] Yasoña v. De Ramos, G.R. No. 156339, October 6, 2004, 440 SCRA 154, 157.

[123] *Id.* at 158-159; Villanueva v. UCPB, G.R. No. 138291, March 7, 2000, 327 SCRA 391, 400; Ponce v. Legaspi, G.R. No. 79184, May 6, 1992, 208 SCRA 377, 388.

[124] *Id.*

[125] *Id.*

[126] Loney v. People, G.R. No. 152644, February 10, 2006, 482 SCRA 194, 212.

[127] Roque v. People, G.R. No. 138954. November 25, 2004, 444 SCRA 98, 114.

[128] Garcia v. Court of Appeals, G.R. No. 157171, March 14, 2006, 484 SCRA 617, 622-623.

[129] Nierras v. Dacuycuy, G.R. Nos. 59568-76, January 11, 1990, 181 SCRA 1, 8.

[130] 32 Phil. 363, 365 (1915).

[131] China Banking Corporation v. Court of Appeals, G.R. No. 94182, March 28, 1994, 231 SCRA 472, 478; Albenson Enterprises Corp. v. Court of Appeals, G.R. No. 88694, January 11, 1993, 217 SCRA 16, 29.

[132] *Id.*

[133] Lucas v. Royo, G.R. No. 136185, October 30, 2000, 344 SCRA 481, 487.

[134] Que v. Intermediate Appellate Court, G.R. No. 66865, January 13, 1989, 169 SCRA 137, 150.

[135] Rivera v. Roman, G.R. No. 142402, September 20, 2005, 470 SCRA 276, 289-290; Saber v. Court of Appeals, *supra*, at 290; China Banking Corporation v. Court of Appeals, *supra*.

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