

**RADIO COMMUNICATIONS OF THE PHILIPPINES, INC. (RCPI),
PETITIONER, VS. ALFONSO VERCHEZ, GRACE VERCHEZ-INFANTE,
MARDONIO INFANTE, ZENAIDA VERCHEZ-CATIBOG, AND
FORTUNATO CATIBOG, R...**

G.R. NO. 164349. January 31, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On January 21, 1991, Editha Hebron Verchez (Editha) was confined at the Sorsogon Provincial Hospital due to an ailment. On even date, her daughter Grace Verchez-Infante (Grace) immediately hied to the Sorsogon Branch of the Radio Communications of the Philippines, Inc. (RCPI) whose services she engaged to send a telegram to her sister Zenaida Verchez-Catibog (Zenaida) who was residing at 18 Legal St., GSIS Village, Quezon City[1] reading: "Send check money Mommy hospital." For RCPI's services, Grace paid P10.50[2] for which she was issued a receipt.[3]

As three days after RCPI was engaged to send the telegram to Zenaida no response was received from her, Grace sent a letter to Zenaida, this time thru JRS Delivery Service, reprimanding her for not sending any financial aid.

Immediately after she received Grace's letter, Zenaida, along with her husband Fortunato Catibog, left on January 26, 1991 for Sorsogon. On her arrival at Sorsogon, she disclaimed having received any telegram.

In the meantime, Zenaida and her husband, together with her mother Editha left for Quezon City on January 28, 1991 and brought Editha to the Veterans Memorial Hospital in Quezon City where she was confined from January 30, 1991 to March 21, 1991.

The telegram was finally delivered to Zenaida 25 days later or on February 15, 1991.[4] On inquiry from RCPI why it took that long to deliver it, a messenger of RCPI replied that he had nothing to do with the delivery thereof as it was another messenger who previously was assigned to deliver the same but the address could not be located, hence, the telegram was resent on February 2, 1991, and the second messenger finally found the address on February 15, 1991.

Editha's husband Alfonso Verchez (Verchez), by letter of March 5, 1991,[5] demanded an explanation from the manager of the Service Quality Control Department of the RCPI, Mrs. Lorna D. Fabian, who replied, by letter of March 13, 1991,[6]as follows:

Our investigation on this matter disclosed that subject telegram was duly processed in accordance with our standard operating procedure. However, delivery was not immediately effected due to the occurrence of circumstances which were beyond the control and foresight of RCPI. Among others, during the transmission process, the radio link connecting the points of communication involved encountered radio noise and interferences such that subject telegram did not initially registered (sic) in the receiving teleprinter machine.

Our internal message monitoring led to the discovery of the above. Thus, a repeat transmission was made and

subsequent delivery was effected. (Underscoring supplied)

Verchez's lawyer thereupon wrote RCPI's manager Fabian, by letter of July 23, 1991,[7] requesting for a conference on a specified date and time, but no representative of RCPI showed up at said date and time.

On April 17, 1992, Editha died.

On September 8, 1993, Verchez, along with his daughters Grace and Zenaida and their respective spouses, filed a complaint against RCPI before the Regional Trial Court (RTC) of Sorsogon for damages. In their complaint, the plaintiffs alleged that, inter alia, the delay in delivering the telegram contributed to the early demise of the late Editha to their damage and prejudice,[8] for which they prayed for the award of moral and exemplary damages[9] and attorney's fees.[10]

After its motion to dismiss the complaint for improper venue[11] was denied[12] by Branch 5 of the RTC of Sorsogon, RCPI filed its answer, alleging that except with respect to Grace,[13] the other plaintiffs had no privity of contract with it; any delay in the sending of the telegram was due to force majeure, "specifically, but not limited to, radio noise and interferences which adversely affected the transmission and/or reception of the telegraphic message";[14] the clause in the Telegram Transmission Form signed by Grace absolved it from liability for any damage arising from the transmission other than the refund of telegram tolls;[15] it observed due diligence in the selection and supervision of its employees; and at all events, any cause of action had been barred by laches.[16]

The trial court, observing that "although the delayed delivery of the questioned telegram was not apparently the proximate cause of the death of Editha," ruled out the presence of force majeure. Respecting the clause in the telegram relied upon by RCPI, the trial court held that it partakes of the nature of a contract of adhesion.

Finding that the nature of RCPI's business obligated it to dispatch the telegram to the addressee at the earliest possible time but that it did not in view of the negligence of its employees to repair its radio transmitter and the concomitant delay in delivering the telegram on time, the trial court, upon the following provisions of the Civil Code, to wit:

Article 2176 – Whoever by act or omission causes damage to another, there being at 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 quasi-delict and is governed by the provisions of this Chapter.

Article 1173 defines the fault of (sic) negligence of the obligor as the "omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the person, of the time, or the place."

In the instant case, the obligation of the defendant to deliver the telegram to the addressee is of an urgent nature. Its essence is the early delivery of the telegram to the concerned person. Yet, due to the negligence of its employees, the defendant failed to discharge of its obligation on time making it liable for damages under Article 2176.

The negligence on the part of the employees gives rise to the presumption of negligence on the part of the employer.[17] (Underscoring supplied),

rendered judgment against RCPI. Accordingly, it disposed:

WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered in favor of the plaintiffs and against the defendant, to wit:

Ordering the defendant to pay the plaintiffs the following amount:

- The amount of One Hundred Thousand (P100,000.00) Pesos as moral damages;
- The amount of Twenty Thousand (P20,000.00) Pesos as attorney's fees; and
- To pay the costs.

SO ORDERED.[18]

On appeal, the Court of Appeals, by Decision of February 27, 2004,[19]affirmed the trial court's decision.

Hence, RCPI's present petition for review on certiorari, it raising the following questions: (1) "Is the award of moral damages proper even if the trial court found that there was no direct connection between the injury and the alleged negligent acts?"[20] and (2) "Are the stipulations in the 'Telegram Transmission Form,' in the nature "contracts of adhesion" (sic)? [21]

RCPI insists that respondents failed to prove any causal connection between its delay in transmitting the telegram and Editha's death.[22]

RCPI's stand fails. It bears noting that its liability is anchored on culpa contractual or breach of contract with regard to Grace, and on tort with regard to her co-plaintiffs-herein-co-respondents.

Article 1170 of the Civil Code provides:

Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. (Underscoring supplied)

Passing on this codal provision, this Court explained:

In culpa contractual x x x the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promisee that may include his "expectation interest," which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his "reliance interest," which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his "restitution interest," which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. The effect of every infraction is to create a new duty, that is, to make recompense to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like proof of his exercise of due diligence x x x or of the attendance of fortuitous event, to excuse him from his ensuing liability.[23] (Emphasis and underscoring supplied)

In the case at bar, RCPI bound itself to deliver the telegram within the shortest possible time. It took 25 days, however, for RCPI to deliver it.

RCPI invokes force majeure, specifically, the alleged radio noise and interferences which adversely affected the transmission and/or reception of the telegraphic message. Additionally, its messenger claimed he could not locate the address of Zenaida and it was only on the third attempt that he was able to deliver the telegram.

For the defense of force majeure to prosper,

x x x it is necessary that one has committed no negligence or misconduct that may have occasioned the loss. An act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible

adverse consequences of such a loss. One's negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability. When the effect is found to be partly the result of a person's participation – whether by active intervention, neglect or failure to act – the whole occurrence is humanized and removed from the rules applicable to acts of God.

x x x x

Article 1174 of the Civil Code states that no person shall be responsible for a fortuitous event that could not be foreseen or, though foreseen, was inevitable. In other words, there must be an exclusion of human intervention from the cause of injury or loss.[24] (Emphasis and underscoring supplied)

Assuming *arguendo* that fortuitous circumstances prevented RCPI from delivering the telegram at the soonest possible time, it should have at least informed Grace of the non-transmission and the non-delivery so that she could have taken steps to remedy the situation. But it did not. There lies the fault or negligence.

In an earlier case also involving RCPI, this Court held:

Considering the public utility of RCPI's business and its contractual obligation to transmit messages, it should exercise due diligence to ascertain that messages are delivered to the persons at the given address and should provide a system whereby in cases of undelivered messages the sender is given notice of non-delivery. Messages sent by cable or wireless means are usually more important and urgent than those which can wait for the mail.[25]

x x x x

People depend on telecommunications companies in times of deep emotional stress or pressing financial needs. Knowing that messages about the illnesses or deaths of loved ones, births or marriages in a family, important business transactions, and notices of conferences or meetings as in this case, are coursed through the petitioner and similar corporations, it is incumbent upon them to exercise a greater amount of care and concern than that shown in this case. Every reasonable effort to inform senders of the non-delivery of messages should be undertaken.[26]

(Emphasis and underscoring supplied)

RCPI argues, however, against the presence of urgency in the delivery of the telegram, as well as the basis for the award of moral damages, thus:[27]

The request to send check as written in the telegraphic text negates the existence of urgency that private respondents' allegations that "time was of the essence" imports. A check drawn against a Manila Bank and transmitted to Sorsogon, Sorsogon will have to be deposited in a bank in Sorsogon and pass thru a minimum clearing period of 5 days before it may be encashed or withdrawn. If the transmittal of the requested check to Sorsogon took 1 day – private respondents could therefore still wait for 6 days before the same may be withdrawn. Requesting a check that would take 6 days before it could be withdrawn therefore contradicts plaintiff's claim of urgency or need.[28]

At any rate, any sense of urgency of the situation was met when Grace Verchez was able to communicate to Manila via a letter that she sent to the same addressee in Manila thru JRS.[29]

x x x x

As far as the respondent court's award for moral damages is concerned, the same has no basis whatsoever since private respondent Alfonso Verchez did not accompany his late wife when the latter went to Manila by bus. He stayed behind in Sorsogon for almost 1 week before he proceeded to Manila. [30]

When pressed on cross-examination, private respondent Alfonso Verchez could not give any plausible reason as to the reason why he did not accompany his ailing wife to Manila.[31]

x x x x

It is also important to consider in resolving private respondents' claim for moral damages that private respondent Grace Verchez did not accompany her ailing mother to Manila.[32]

x x x x

It is the common reaction of a husband to be at his ailing wife's side as much as possible. The fact that private respondent Alfonso Verchez stayed behind in Sorsogon for almost 1 week convincingly demonstrates that he himself knew that his wife was not in critical condition.[33]

(Emphasis and underscoring supplied)

RCPI's arguments fail. For it is its breach of contract upon which its liability is, it bears repeating, anchored. Since RCPI breached its contract, the presumption is that it was at fault or negligent. It, however, failed to rebut this presumption.

For breach of contract then, RCPI is liable to Grace for damages.

And for quasi-delict, RCPI is liable to Grace's co-respondents following Article 2176 of the Civil Code which provides:

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. (Underscoring supplied)

RCPI's liability as an employer could of course be avoided if it could prove that it observed the diligence of a good father of a family to prevent damage. Article 2180 of the Civil Code so provides:

The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

x x x x

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Underscoring supplied)

RCPI failed, however, to prove that it observed all the diligence of a good father of a family to prevent damage.

Respecting the assailed award of moral damages, a determination of the presence of the following requisites to justify the award is in order:

x x x firstly, evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of damages sustained by the claimant; and fourthly, that the

case is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.[34]

Respecting the first requisite, evidence of suffering by the plaintiffs-herein respondents was correctly appreciated by the CA in this wise:

The failure of RCPI to deliver the telegram containing the message of appellees on time, disturbed their filial tranquillity. Family members blamed each other for failing to respond swiftly to an emergency that involved the life of the late Mrs. Verchez, who suffered from diabetes.[35]

As reflected in the foregoing discussions, the second and third requisites are present.

On the fourth requisite, Article 2220 of the Civil Code provides:

Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith. (Emphasis and underscoring supplied)

After RCPI's first attempt to deliver the telegram failed, it did not inform Grace of the non-delivery thereof and waited for 12 days before trying to deliver it again, knowing – as it should know – that time is of the essence in the delivery of telegrams. When its second long-delayed attempt to deliver the telegram again failed, it, again, waited for another 12 days before making a third attempt. Such nonchalance in performing its urgent obligation indicates gross negligence amounting to bad faith. The fourth requisite is thus also present.

In applying the above-quoted Article 2220, this Court has awarded moral damages in cases of breach of contract where the defendant was guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligation.[36]

As for RCPI's tort-based liability, Article 2219 of the Civil Code provides:

Moral damages may be recovered in the following and analogous cases:

x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. (Emphasis supplied)

Article 26 of the Civil Code, in turn, provides:

Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention, and other relief:

x x x x

(2) Meddling with or disturbing the private life or family relations of another. (Emphasis supplied)

RCPI's negligence in not promptly performing its obligation undoubtedly disturbed the peace of mind not only of Grace but also her co-respondents. As observed by the appellate court, it disrupted the "filial tranquillity" among them as they blamed each other "for failing to respond swiftly to an emergency." The tortious acts and/or omissions complained of in this case are, therefore, analogous to acts mentioned under Article 26 of the Civil Code, which are among the instances of quasi-delict when courts may award moral damages under Article 2219 of the Civil Code.

In fine, the award to the plaintiffs-herein respondents of moral damages is in order, as is the award of attorney's fees, respondents having been compelled to litigate to protect their rights.

Clutching at straws, RCPI insists that the limited liability clause in the "Telegram Transmission Form" is not a contract of adhesion. Thus it argues:

Neither can the Telegram Transmission Form be considered a contract of adhesion as held by the respondent court. The said stipulations were all written in bold letters right in front of the Telegram Transmission Form. As a matter of fact they were beside the space where the telegram senders write their telegraphic messages. It would have been different if the stipulations were written at the back for surely there is no way the sender will easily notice them. The fact that the stipulations were located in a particular space where they can easily be seen, is sufficient notice to any sender (like Grace Verchez-Infante) where she could manifest her disapproval, leave the RCPI station and avail of the services of the other telegram operators.[37] (Underscoring supplied)

RCPI misunderstands the nature of a contract of adhesion. Neither the readability of the stipulations nor their physical location in the contract determines whether it is one of adhesion.

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[38] (Emphasis and underscoring supplied)

While a contract of adhesion is not necessarily void and unenforceable, since it is construed strictly against the party who drafted it or gave rise to any ambiguity therein, it is stricken down as void and unenforceable or subversive of public policy when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing.[39]

This Court holds that the Court of Appeals' finding that the parties' contract is one of adhesion which is void is, given the facts and circumstances of the case, thus well-taken.

WHEREFORE, the petition is DENIED, and the challenged decision of the Court of Appeals is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, and Tinga, JJ., concur.

[1] RTC records, p. 2.

[2] Exhibit "A," RTC records, p. 7; Exhibit "C," records, p. 9.

[3] Exhibit "A," supra note 2.

[4] Supra note 1.

[5] Exhibit "D," RTC records, pp. 10-11.

[6] Exhibit "E," RTC records p. 12.

[7] Exhibit "F," RTC records, p. 13.

[8] RTC records, p. 4.

[9] Id.

[10] Id. at 4-5.

[11] Id. at 19-30.

[12] Id. at 42.

[13] Id. at 60-61.

[14] Id. at 61.

[15] Id. at 61-62. See also p. 30.

[16] Id. at p. 62.

[17] Id. at 393 (citations omitted).

[18] Id. at 394.

[19] Penned by Justice Mariano C. Del Castillo, with the concurrence of Justices Rodrigo V. Cosico and Vicente Q. Roxas.

[20] Rollo, p. 9.

[21] Ibid.

[22] Id. at 12.

[23] FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation, 435 Phil. 333, 341-342 (2002) (citations omitted).

[24] Mindex Resources Development v. Morillo, 428 Phil. 934, 944-945 (2002) (citations omitted).

[25] Radio Communications of the Philippines, Inc. v. Rodriguez, G.R. No. 83768, February 28, 1990, 182 SCRA 899, 905 (citations omitted).

[26] Id. at 908 (citations omitted).

[27] Rollo, pp. 12-15.

[28] Id. at 13.

[29] Id.

[30] Id. at 14 (citations omitted).

[31] Id. (citations omitted).

[32] Id.

[33] Id. at 15.

[34] Philippine Telegraph & Telephone Corporation v. Court of Appeals, 437 Phil. 76, 84 (2002); see also Gamboa, Rodriguez, Rivera & Co., Inc. v. Court of Appeals, G.R. No. 117456, May 6, 2005, 458 SCRA 68 (citations omitted).

[35] CA rollo, p. 97 (citations omitted).

[36] See Sarmiento v. Sun-Cabrido, 449 Phil. 108, 116-117 (2003).

[37] Rollo, p. 55.

[38]Philippine Commercial International Bank v. Court of Appeals, 325 Phil. 588, 597 (1996).

[39]Saludo, Jr. v. Court of Appeals, G.R. No. 95536, March 23, 1992, 207 SCRA 498, 528; Philippine Commercial International Bank v. Court of Appeals, *supra*; Sweet Lines, Inc. v. Teves, G.R. No. L-37750, May 19, 1978, 83 SCRA 361 (citations omitted).

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