

FRANCISCO N. VILLANUEVA, PETITIONER, VS. VIRGILIO P. BALAGUER AND INTERCONTINENTAL BROADCASTING CORPORATION CHANNEL-13, RESPONDENTS.

G.R. No. 180197. June 23, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed is the August 10, 2007 Decision[1] of the Court of Appeals in CA-G.R. CV No. 81657 which reversed the October 29, 2003 Decision and February 2, 2004 Resolution of the Regional Trial Court of Quezon City, Branch 89 finding petitioner Francisco N. Villanueva entitled to damages. Also assailed is the October 16, 2007 Resolution[2] denying the motion for reconsideration.

On March 31, 1992, petitioner Francisco N. Villanueva, then Assistant Manager for Operations of Intercontinental Broadcasting Corporation-Channel 13 (IBC-13) was dismissed from employment on the ground of loss of confidence for purportedly selling forged certificates of performance. Contesting his termination, petitioner filed a complaint for illegal dismissal before the National Labor Relations Commission.

During the pendency of the labor case, news articles about irregularities in IBC-13 were published in the July 18, 1992 issue of the Manila Times and the Philippine Star, and in the July 19, 1992 issue of the Manila Bulletin.

In these news articles, respondent Virgilio P. Balaguer, then President of IBC-13, was quoted to have said that he uncovered various anomalies in IBC-13 during his tenure which led to the dismissal of an operations executive for selling forged certificates of performance.

In the Manila Times, on July 18, 1992:[3]

Anomalies at IBC-13 uncovered

INSIDER pilferage, malversation, overpricing and other irregularities have cost government-owned Intercontinental Broadcasting Corporation (IBC) 13 more than P108 million in losses for the period 1986-1989.

Gil P. Balaguer, IBC president, uncovered the anomalies after a long and painstaking investigation when he took over the company in 1990.

The investigation uncovered irregularities ranging from selling forged certificates of performance (CP's) to non-remittance of sales collections, illegal and unauthorized airing of movie trailer advertisements (MTA's), illegal leasing of electricity and machines to "friendly clients," millions worth of undocumented transactions to movie suppliers, exorbitant fees against in-house productions, abused overtime charges by certain employees.

The anomalies did not escape Balaguer when he came to IBC-13 backed by hands-on experience in television management work.

IBC has had four presidents since 1986 after the EDSA revolution. Balaguer is the fifth president.

A special investigative committee helped Balaguer uncover the anomalies in IBC. It led to the dismissal of an operations executive who sold forged certificates of performance, a former supervisor who pocketed IBC's sales collections, and station managers who did not remit payments on radio advertisements.

Other anomalies committed against the government station include the loose issuance of technical facilities orders (TFO's) which practically leased the network's broadcast facilities to a "friendly client" for free.

Balaguer, sources said, succeeded in staying as president because of his technical expertise in media and communications and his "managerial will" to cleanse the ranks of the firm. (Emphasis supplied)

In the Philippine Star, on July 18, 1992:[4]

IBC president uncovers anomalies at tv network

The government-owned International Broadcasting Corp.-Channel 13 lost more than P108 million due to insider pilferage, malversation, overpricing and other irregularities from 1986 to 1989.

IBC president Gil P. Balaguer uncovered the anomalies after "a long and painstaking investigation" when he took over the television station in 1990.

Balaguer, in a statement, said the irregularities uncovered included the sale of forged certificates of performance, non-remittance of sales collections, illegal and unauthorized airing of movie advertisements, illegal lease of equipment to "friendly" clients, exorbitant fees on in-house productions and abused overtime charges by some employees.

Balaguer, the fifth IBC president since 1986, easily detected the anomalies as he has a vast experience in television management work.

A special investigative committee helped Balaguer uncover the anomalies at IBC, which has resulted in the dismissal of an operations executive who sold forged certificates of performance, a former supervisor who pocketed sales collections and a station manager who did not remit payments on radio advertisements. (Emphasis supplied)

In the Manila Bulletin, on July 19, 1992:[5]

Sequestered firm's losses bared

The Intercontinental Broadcasting Corp. (IBC) 13, a sequestered firm, lost more than P108 million for the period 1986-1989 due to pilferage, malversation, over-pricing, and other irregularities perpetrated by a syndicate, according to Gil P. Balaguer, IBC president, who took over the company in 1990.

He said the irregularities ranged from selling forged certificates of performance to non-remittance of sales collections, illegal and unauthorized airing of movie trailer advertisements, illegal leasing of electricity and machines to "friendly clients," millions worth of undocumented transactions to movie suppliers, exorbitant fees against in-house productions, and abused overtime charges by certain employees.

IBC has had four presidents since 1986, Balaguer being the fifth.

A special probe committee that helped Balaguer said one dismissed executive sold forged certificates of performance, a former supervisor pocketed IBC sales collections, and some station managers did not remit payments on radio advertisements.

The loose issuance of technical facilities orders practically leased the network's broadcast facilities to a "friendly client" for free.

Balaguer is credited with accelerating the network's rank from number five in 1988 to number two or three under current ratings, despite the efforts of some holdouts who tried to derail his administration. (Emphasis supplied)

In a letter dated July 20, 1992, petitioner urged respondents to confirm or deny if he was the person alluded to in the news article as the operations executive of IBC-13 who was dismissed for selling forged certificates of performance.[6] None of the respondents replied to the letter.

On September 25, 1992, petitioner filed before the Regional Trial Court of Quezon City a complaint for damages against Balaguer,[7] which was later amended by impleading IBC-13 as additional defendant.[8]

Petitioner claimed that respondents caused the publication of the subject news articles which defamed him by falsely and maliciously referring to him as the IBC-13 operations executive who sold forged certificates of performance.[9] He alleged that in causing these false and malicious publications, respondents violated Articles 19, 20, 21, and 26 of the Civil Code.[10]

Balaguer denied that he had anything to do with the publications.[11] However, he argued that the publications are not actionable because they are true and without malice;[12] are of legitimate public concern and interest because IBC-13 is under sequestration; that petitioner is a newsworthy and public figure;[13] and that they are privileged communication.[14] Balaguer filed a counterclaim against petitioner for alleged malicious filing of the civil case.[15]

IBC-13 also denied participation in the publications. It claimed that assuming press statements were issued during a press conference, the same was done solely by Balaguer without its authority or sanction.[16] IBC-13 also filed a counterclaim against petitioner[17] and a cross-claim against Balaguer.[18]

On August 31, 1993, the Labor Arbiter rendered a Decision[19] finding petitioner's dismissal as illegal, which was affirmed by the National Labor Relations Commission. The Commission, however, declared respondents to be acting in good faith, hence, it deleted the award of moral and exemplary damages. On December 6, 1994, the parties entered into a Compromise Agreement,[20] with IBC-13 proposing a scheme of payment for petitioner's monetary claims, and with IBC-13 and petitioner waiving any and all claims against each other arising out of the labor case.

On October 29, 2003, the Regional Trial Court[21] of Quezon City held that petitioner is entitled to an award of damages,[22] thus:

WHEREFORE, premises considered, judgment is rendered in favor of plaintiff Francisco N. Villanueva and against defendants Balaguer and Intercontinental Broadcasting Corporation (IBC-13).

Accordingly, defendants are hereby ordered to pay the plaintiff jointly and severally, as follows:

- 1) the sum of Five Hundred Thousand (P500,000.00) Pesos by way of moral damages;
- 2) the sum of One Hundred Thousand (P100,000.00) Pesos as and by way of exemplary damages;
- 3) the sum of Thirty Thousand (P30,000.00) Pesos by way of nominal damages;
- 4) the sum of Ten Thousand (P10,000.00) Pesos by way of temperate or moderate damages; and
- 5) the sum of One Hundred Thousand (P100,000.00) Pesos as and by way of attorney's fees.

With costs against defendants.

SO ORDERED.[23]

Respondents moved for reconsideration but it was denied.[24] Hence, they appealed to the Court of Appeals which rendered the herein assailed Decision on August 10, 2007, disposing thus:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The October 29, 2003 Decision and the February 2, 2004 Resolution with Clarification issued by the Regional Trial Court, Br. 89, National Capital Judicial Region, Quezon City, are hereby REVERSED. The Complaint, the Counterclaim, and the Cross-claim

in Civil Case No. Q-92-13680 are hereby DISMISSED.

SO ORDERED.[25]

Petitioner's motion for reconsideration was denied. Hence, the instant petition raising the following issues:[26]

a)

Does the failure of the addressee to respond to a letter containing statements attributing to him commission of acts constituting actionable wrong, hence, adverse to his interest, and of such nature as would call for his reaction, reply, or comment if untrue, constitute his admission of said statements, consequently, may be used in evidence against him?

b)

Is the admission by a principal admissible against its agent? Is the admission by a person jointly interested with a party admissible against the latter?

c)

Does the failure of an individual to disown the attribution to him by newspaper publications, as the source of defamatory newspaper reports, when he is free and very able to do so, constitute admission that he, indeed, was the source of the said defamatory news reports?

The petition lacks merit.

As early as 1905, this Court has declared that it is the duty of the party seeking to enforce a right to prove that their right actually exists. In varying language, our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side.[27] Thus, in civil cases, the burden of proof is generally on the plaintiff, with respect to his complaint.[28]

In proving his claim, petitioner relied on the July 20, 1992 letter, the newspaper articles, and the alleged admission of respondents. Based on the above pieces of evidence, the Court finds that petitioner was unable to discharge his burden of proof. As such, the Court of Appeals properly dismissed the complaint for damages.

The July 20, 1992 letter sent by petitioner to respondents reads as follows:[29]

20 July 1992

Mr. Virgilio Balaguer
Intercontinental Broadcasting Corporation
Broadcast City, Capitol Hills
Diliman, Quezon City

Dear Mr. Balaguer:

We write on behalf of our client, Mr. Francisco N. Villanueva.

You have caused to be published in the 18 July 1992 issue of The Philippine Star and 19 July 1992 issue of Manila Bulletin, a news item wherein you stated that you dismissed an Operations Executive because he "sold forged Certificate of Performance". Our immediate impression is, you are referring to our client, Francisco N. Villanueva, because he is the only Operations Executive in IBC, Channel 13 you have illegally and despotically dismissed.

We urge you, therefore, to inform us, within forty-eight (48) hours from your receipt of this letter that the

Operations Executive you referred to in your press statement is not our client, Francisco N. Villanueva. We shall construe your failure/refusal to reply as your unequivocal admission that you are, in fact, actually referring to our client, Mr. Francisco N. Villanueva, as the operations executive who "sold forged Certificate of Performance". Accordingly, we shall immediately proceed to take appropriate criminal and civil court actions against you without further notice.

Very truly yours,

(signed)

REX G. RICO

cc: Mr. Francisco N. Villanueva
Board of Administrators, IBC-13

Petitioner argues that by not responding to the above letter which expressly urged them to reply if the statements therein contained are untrue, respondents in effect admitted the matters stated therein, pursuant to the rule on admission by silence in Sec. 32, Rule 130,[30] and the disputable presumption that acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact.[31]

Petitioner's argument lacks merit. One cannot prove his claim by placing the burden of proof on the other party. Indeed, "(a) man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission." [32]

Moreover, the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant. However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.[33]

In the same manner, we also cannot assume an admission by silence on the part of Balaguer by virtue of his failure to protest or disclaim the attribution to him by the newspapers that he is the source of the articles. As explained above, the rule on admission by silence is relaxed when the statement is not made orally in one's presence or when one still has to resort to a written reply, or when there is no mutual correspondence between the parties.

As for the publications themselves, newspaper articles purporting to state what the defendant said are inadmissible against him, since he cannot be held responsible for the writings of third persons.[34] As correctly observed by the Court of Appeals, "while the subject news items indicated that Balaguer was the source of the columnists, proving that he truly made such statements is another matter." [35] Petitioner failed to prove that Balaguer did make such statements.

Notably, petitioner did not implead the editorial staff and the publisher of the alleged defamatory articles.[36] Contrary to petitioner's assertion, he should have at least presented the authors of the news articles as witnesses to prove his case against respondents in the absence of an express admission by the latter that the subject news articles have been caused by them.

Petitioner also claims that respondents have admitted that they held a press conference and caused the publication of the news articles, based on the following testimony of Balaguer:[37]

ATTY. JIMENEZ:

Okay, Let me ask another question. Now Mr. Balaguer this publication referred to so called anomalies of 1986 to 1989 now how about the termination.

A: 1991.

ATTY. JIMENEZ:

Yes.

WITNESS:

I think the termination of Mr. Villanueva has nothing to do with that press statement release because the period that covers that report is from specific date 1986 to 1989. (TSN, 07 November 2000, p. 19)

Admissions, however, should be clear and unambiguous[38] which can hardly be said of Balaguer's above testimony. If Balaguer intended to admit the allegation that he conducted a press conference and caused the publication of the news articles, he could have done so. Instead, Balaguer specifically denied these allegations in paragraphs 4 and 5 of his Answer.[39]

Petitioner next argues that IBC-13's Cross-Claim against Balaguer, in that:[40]

11. The acts complained of by the plaintiff were done solely by co-defendant Balaguer.

Balaguer resorted to these things in his attempt to stave off his impending removal from IBC.

is an admission by IBC-13, which is admissible against Balaguer pursuant to Sec. 29, Rule 130[41] as an admission by a co-partner or an agent.

Petitioner is mistaken. IBC-13's cross-claim against Balaguer effectively created an adverse interest between them. Hence, the admission of one defendant is not admissible against his co-defendant. Besides, as already discussed, the alleged acts imputed to Balaguer were never proven to have been committed, much less maliciously, by Balaguer. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Such must be substantiated by evidence.[42]

In sum, we find that petitioner failed to discharge his burden of proof. No satisfactory evidence was presented to prove by preponderance of evidence that respondents committed the acts imputed against them. As such, there is no more need to discuss whether the assailed statements are defamatory.

WHEREFORE, the petition is DENIED. The August 10, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 81657 reversing the October 29, 2003 Decision and February 2, 2004 Resolution of the Regional Trial Court of Quezon City, Branch 89, finding petitioner entitled to damages, as well as the October 16, 2007 Resolution denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Bersamin, JJ., concur.

[*] Designated as additional member of the Third Division per raffle dated June 17, 2009.

[1] Rollo, pp. 40-50; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[2] Id. at 52-53.

[3] Id. at 98.

[4] Id. at 101.

[5] Id. at 95.

[6] Id. at 104.

[7] Id. at 54.

[8] Id. at 57.

[9] Id. at 58.

[10] Art. 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.

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who wilfully 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.

Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. x x x

[11] Rollo, p. 67.

[12] Id.

[13] Id. at 67-68.

[14] Id. at 68.

[15] Id.

[16] Id. at 61.

[17] Id. at 62.

[18] Id. at 63.

[19] Id. at 105-128.

[20] Exhibit "27," Folder of Pre-Trial Brief and Exhibits for Virgilio Balaguer.

[21] Penned by Judge Elsa I. De Guzman.

[22] Rollo, pp. 298-337.

[23] Id. at 336.

[24] Id. at 382-393.

[25] Id. at 50.

[26] Id. at 10.

[27] Santiago Virginia Tobacco Planters Association, Inc. v. Philippine Virginia Tobacco Administration and Farmers' Virginia Tobacco Redriers, Inc., G.R. No. L-26292, February 18, 1970, 31 SCRA 528, 535.

[28] Florenz D. Regalado, Remedial Law Compendium - Volume II (Mandaluyong City: National Book Store, 2004), p. 772.

[29] Rollo, p. 104.

[30] SEC. 32. Admission by silence. - An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

[31] Rules of Court, Rule 131, Sec. 3 (x).

[32] Ravago Equipment Rentals, Inc. v. Court of Appeals, 337 Phil. 584, 590-591 (1997).

[33] Regalado, supra note 28 at 724-725.

[34] Carpenter v. Ashley, 148 Cal 422, 83 P 44 (1906).

[35] Rollo, p. 48.

[36] Manuel v. Pano, G.R. No. 46079, April 17, 1989, 172 SCRA 225, 238.

[37] Rollo, p. 21.

[38] Carandang v. Heirs of Quiring A. De Guzman, G.R. No. 160347, November 29, 2006, 508 SCRA 469, 495.

[39] Rollo, pp. 65-66.

[40] Id. at 63.

[41] SEC. 29. Admission by co-partner or agent. - The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

[42] Desiderio P. Jurado, Civil Law Reviewer (Manila: Rex Book Store, Inc., 2006), p. 32.

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