

SNOW MOUNTAIN DAIRY CORPORATION, PETITIONER, VS. GMA VETERANS FORCE, INC., RESPONDENT.

G.R. No. 192446. November 19, 2014

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review filed by petitioner Snow Mountain Dairy Corporation seeking to modify the amount of actual damages awarded in the Decision[1] dated May 31, 2010, of the Court of Appeals (CA) in CA G.R. CV No. 91725.

On March 11, 2005, petitioner and respondent GMA Veterans Force, Inc. entered into a security service agreement[2] where the parties agreed among others, that:

WHEREAS, the AGENCY has offered the CLIENT to provide its security needs for the protection of its employees, properties and premises from injury, loss or damage and for the maintenance of peace and order within its premises at SNOW MOUNTAIN DAIRY CORP.[3]

NOW, THEREFORE, for and in consideration of the foregoing premises of the mutual covenants and stipulation hereinafter contained, the CLIENT and the AGENCY have agreed and do hereby agree and one with the others as follows:[4]

1. The AGENCY shall provide the CLIENT SEVEN (7) qualified and competent security guards who shall render security services needs of the CLIENT;
2. The security guards shall work TWELVE (12) HOURS daily Monday thru Sunday and perform such other duties incidental or connected with the security services:[5]

x x x x

8. The AGENCY shall charge the CLIENT for the Contract Price equivalent to SIXTEEN THOUSAND FOURTEEN (PI 6,014.00) PESOS per month per guard per twelve hours duty:[6]

x x x x

13. This contract shall begin on JANUARY 3, 2005 and shall end on JANUARY 3, 2006. The contract may be renewed subject to the mutual agreement of the parties unless sooner revoked or terminated for just cause by giving the other party prior notice of termination date of contract:[7]

14. Both parties hereby agreed on the provision of this contract - that only grave violation thereof could warrant its termination upon a 30 day notice to other party.[8]

On April 13, 2005, petitioner, through its President Teodoro T. Po, wrote a letter[9] to respondent's General Manager, Domingo de Guzman, informing the latter of the former's decision to replace the security personnel effective April 15, 2005; and that all monies due respondent as provided in the contract shall be settled.

On even date, respondent, through its counsel, wrote petitioner a letter[10] reiterating that their service agreement was good for one year, which could only be terminated for a just cause and a 30-day prior notice; that the termination of the security contract even in the absence of just cause and the lack of due notice may only be accepted provided that petitioner would pay the remaining contract period of 8-1/2 months equivalent to P952,833.00; and that they were open to amicable settlement at just and reasonable terms.

On June 30, 2005, respondent, represented by De Guzman, filed with the Regional Trial Court (RTC) of Pasig City a complaint[11] for damages against petitioner, represented by Amancio Ronquillo, and President Po. The complaint was raffled off to Branch 268 and docketed as Civil Case No. 70429. Respondent alleged that it had entered in a security service agreement with petitioner; that it had recruited seven security guards and posted them to petitioner's premises in compliance with the service agreement and in the process, incurred expenses for training, physical and medical examinations, documentations, procurement of equipments like service firearms, uniform and related expenses; that on April 15, 2005, respondent's security guards were barred by petitioner from entering the service area and prevented from performing their contractual obligation; that it did not commit any violation of the service contract; and that it incurred income opportunity loss worth P952,833.00 which it could have earned if the agreement was faithfully honored up to the end of the contract period. Respondent prayed for actual, moral and exemplary damages, and attorney's fees.

In their Answer with Counterclaim,[12] petitioner denied the material allegations in the complaint and contended that a corporation has a personality separate and distinct from its officers; thus, the inclusion of President Po as defendant was baseless; that the termination of the agreement was justified and well within its prerogative; that there was no basis for the claim of actual damages in the form of unrealized income as said claim was premised on a contingent circumstance, which was the fulfillment and completion of the security agreement; and that respondent's claim for moral and exemplary damages should be denied for lack of basis. Petitioner counterclaimed for damages.

The case was referred to mediation, but no agreement was reached thus, trial on the merits thereafter ensued.

On June 19, 2008, the RTC rendered its Decision,[13] the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff, by ordering the defendants as follows:

To pay to the plaintiff compensatory damages representing the unserved portion of the contract covering the period April 15, 2005 to January 3, 2006 in the amount of P952,833.50;

To pay to the plaintiff the sum of PI 00,000.00 for attorney's fees and appearances, and the cost of the litigation.

SO ORDERED.[14]

The RTC ruled that the parties agreed that the contract cannot be terminated except for a just cause and only after a 30-day notice; that respondent did not assent to the pre-termination; and that there was no valid cause shown for such termination and the provision of 30-day notice was not complied with. The RTC found that respondent was compelled to incur expenses for attorney's fees and cost of litigation.

Petitioner appealed the RTC decision to the CA. After the filing of the respective pleadings, the case was submitted for decision.

On May 31, 2010, the CA issued its assailed decision, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, the appealed Decision dated June 19, 2008 is hereby AFFIRMED

with MODIFICATIONS in that: a) the award of attorney's fees be DELETED; and b) the case against defendant-appellant Teodoro T. Po be DISMISSED.[15]

In so ruling, the CA found that the focal issue in the appeal was whether petitioner's pre-termination of the service contract was valid. The CA ruled in the negative as petitioner miserably failed to show the cause of such pre-termination. It found that petitioner's claim that respondent's service was below the standard required by the contract was not substantiated, hence, a mere afterthought; and that petitioner's termination letter of the service contract made no mention of the alleged security lapses. It then affirmed the RTC's award of actual damages in the amount of P952,833.50 which respondent failed to receive as benefit which would have pertained to it had petitioner not illegally terminated the service contract.

The CA deleted the award of attorney's fees since no evidence was presented to support the same. Lastly, the CA found that President Po cannot be held personally liable for the pre-termination of the service contract, since as President, he was duly authorized to act on behalf of the corporation; and the pre-termination was done in his official capacity and there was no evidence showing that he had acted in bad faith.

Hence, this petition wherein petitioner claims that:

The Honorable Court of Appeals a quo erred when it failed to delete or modify the award of P952,833.50 in actual/compensatory damages in favor of respondent GMA Veterans Force, Inc. [16]

Petitioner contends that to be entitled to the claim of actual or compensatory damages, respondent must have presented evidence proving that it had incurred true damage, i.e., actual and true losses; that in their contract, it was provided that:

8. The AGENCY shall charge the CLIENT for the Contract Price equivalent to SIXTEEN THOUSAND FOURTEEN (PI 6,014.00) PESOS per month per guard per twelve hours duty;[17]

thus, the contract amount per guard per month would not constitute actual income or profit for respondent because only a portion of that amount would go to the latter by way of income as agency fee; that the rest of the said compensation amount would be for the security guard who would render services to petitioner. Petitioner went on with its own computation as to the amount each guard would receive.

We find partial merit in the petition. Art. 2199 of the Civil Code provides:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Thus, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.[18] The burden is to establish one's case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side, is superior to that of the other.[19] Actual damages are not presumed. The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out.[20] The award of actual damages cannot be simply based on the mere allegation of a witness without any tangible claim, such as receipts or other documentary proofs to support such claim.[21]

The RTC awarded P952,833.50 actual or compensatory damages representing the unserved portion of the contract. The CA affirmed such award saying that it represented that which respondent failed to receive as benefit which would have pertained to it had the service contract not been pre-terminated illegally by petitioner. Notably,

the amount awarded was based on the contracted amount of P16,014.00 per security guard per month, multiplied by 7 security guards and multiplied by the unserved portion of the contract. However, the contracted amount of P16,014.00 per guard would not totally pertain to respondent as the same would cover the wage of the security guard and only the remaining portion of the contracted amount, i.e., after deducting the guard's salary, would go to respondent. In this case, respondent had not shown that the security guards were not assigned to another employer, and that it was compelled to pay the guards despite the pre-termination of the security agreement to be entitled to the amount of P16,014.00 per month. Indeed, no evidence was presented by respondent establishing the actual amount of loss suffered by reason of the pre-termination. It is elementary that to recover damages, there must be pleading and proof of actual damages suffered.[22]

Notably, respondent's Comment even establishes the absence of proof of actual amount of loss it suffered when it alleges:

The business of contracting for security guard depend mainly on the contracts the security agency is able to get from the client. Guards are recruited, trained and equipped before they are deployed to client at the expense of the agency. These expenses will come to naught or written off as loss in the event the contract is pre-terminated forcing the agency to either sideline the guards, post them elsewhere or terminate their services altogether. Pecuniary loss is difficult to quantify in this case of security guard contracting although there is no question the agency incurs loss. Respondent in this case, has a reputation in the industry for having established goodwill considering the 110 clients it was able to contract with over the years. Such goodwill can not be calculated in monetary terms and it is unfair to deny damage simply because the actual loss cannot be quantified.[23]

Clearly, there was no basis for the lower court's award of actual damages in the absence of evidence proving the same. Undeniably, however, respondent suffered pecuniary loss because of the pre-termination of its services without any valid cause. But since there was no proof capable of ascertaining the actual loss, we refer to Article 2224 of the Civil Code which provides:

Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss. We also take into consideration that respondent certainly spent for the security guard's training, firearms with ammunitions, uniforms and other necessary things before their deployment to petitioner.

In *Adriano v. Lasala*,[24] we found that respondents suffered pecuniary loss because of petitioners' untimely termination of the former's security services for no cause at all. We then affirmed the CA's award of temperate damages in the amount of P200,000.00 in lieu of actual damages awarded by the RTC since there was no proof capable of ascertaining the actual loss.

In this case, we find it just and proper to award temperate damages in the amount of P200,000.00 in lieu of actual damages.

WHEREFORE, the Decision dated May 31, 2010, of the Court of Appeals, is **AFFIRMED** with **MODIFICATION**. The award of actual damages is deleted and, in lieu thereof, temperate damages amounting to P200,000.00 is awarded with legal interest of six percent (6%) per annum from the time this Decision attains finality until its full satisfaction.

SO ORDERED.

Velasco, Jr., (Chairperson), Villarama, Jr., Reyes, and Jardeleza, JJ., concur.

December 4, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____November 19, 2014____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 4, 2014 at 2:55 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Rosalinda Asuncion-Vicente and Manuel M. Barrios, concurring; rollo, pp. 9-33.

[2] Records, pp. 10-14.

[3] Id. at 10.

[4] Id.

[5] Id. at 11.

[6] Id. at 12.

[7] Id. at 13.

[8] Id.

[9] Id. at 15

[10] Id. at 16.

[11] Id. at 3-8.

[12] Id. at 31-37,

[13] Id. at 260-265; Per Judge Amelia Manalastas.

[14] Id. at 265.

[15] Rollo, pp. 77-78.

[16] Id. at 40.

[17] Records, p. 12

[18] See *Filipinas Synthetic Fiber Corporation v. Delos Santos*, G..R. No. 152033, March 16, 2011, 645 SCRA

463, 476.

[19] Id. at. 477.

[20] Id.

[21] See *Bank of the Philippine Islands v. ALS Management & Development Corporation*, 471 Phil. 544, 568 (2004).

[22] *Canada v. All Commodities Marketing Corporation*, 390 Phil. 342, 350 (2008).

[23] *Rollo*, p. 93.

[24] *Adriano v. Lasala*, G.R. No. 197842, October 9, 2013, 707 SCRA 346.

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