

**EQUITABLE BANKING CORPORATION, PETITIONER, VS.
INTERMEDIATE APPELLATE COURT, ZENIA VILLARIZA, ARMANDO
VILLARIZA AND FERNANDO N. CONTRERAS, RESPONDENTS.**

G.R. No. 66070, October 31, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the recovery of moral and exemplary damages allegedly because of a collection suit for P250 which was paid one day after the suit was filed.

The theory of lawyer Fernando N. Contreras is that it was a malicious prosecution against him. On the other hand, the bank's theory is that the claim of P80,000 for moral damages is bereft of rhyme or reason (Exh. 3).

The Villariza spouses, with Contreras as co-maker, borrowed from the Davao City branch of the Equitable Banking Corporation P1,000. The amount was due in ninety days or on December 7, 1976. Only P250 was paid on that date. Another P250 was paid on March 7, 1977.

The payment of the balance of P500 was extended. On July 27, 1977, the sum of P250 was paid. The re-maining balance of P250 was due on or before September 6, 1977. As it was not paid, its collection was indorsed to the bank's lawyers on October 25, 1977.

The suit was delayed because Zenia Villariza, the principal obligor, was a city court employee known to the bank's lawyers while Contreras was the bank's retained counsel up to July, 1976, according to the trial court; or up to August, 1977, according to its lawyers.

On December 21, 1977, lawyer Oscar G. Tirol phoned Contreras about the unpaid balance. He was reluctant to bring the matter to the court. Contreras told Tirol to do his job and file the complaint or that since Tirol was paid to file the case, he should file it (138, tsn; Exh. 5). Contreras denied that there was such a phone call.

The next day, December 22, Tirol filed a collection case in Branch 3 of the city court against Contreras and the Villariza spouses. It was prayed therein that the defendants be ordered to pay the bank P250 plus 14% in-terest a year and 10% of the amount due as attorney's fees.

It is a question whether Contreras was aware of the filing of that suit, since Zenia Villariza was an employee of Branch 4 of the court. The fact is that on the following day Contreras paid the bank P250 but he did not pay the accrued interest and costs.

Apparently unaware of the collection suit, the bank informed Tirol of that payment only about a week later. Contreras did not apprise Tirol of his payment. Summons was served on the Villariza spouses on February 10, 1978 but, contrary to Contreras' pretension, summons was never served upon him because the sheriff could not contact him (Exh. 1-B). Nevertheless, Contreras' law firm filed an answer to the complaint dated February 11, 1978.

On that same date, February 10, or before the trial on February 14, Tirol, having become aware of Contreras' payment, filed a notice of dismissal. The city judge dismissed the complaint and counterclaim in his order of February 14, 1978 (Exh. 1-D).

On the following day, February 15, Contreras and the Villariza spouses filed against the bank the instant case wherein they prayed for moral damages of P80,000, attorney's fees of P10,000, reimbursement of litigation expenses and exemplary damages of not less than P10,000. They claimed that the collection suit greatly disturbed them and caused them mental anguish, besmirched reputation, wounded feelings, social humiliation and sleep-less nights.

The bank answered the complaint. The record does not show whether there was a pre-trial. The trial court rendered judgment for the "plaintiff", meaning Contreras only and excluding the Villarizas, ordering the bank to pay him P40,000 as moral and exemplary damages and P6,000 as attorney's fees and litigation expenses. The Appellate Court affirmed in toto that judgment.

Inexplicably, Velona P. Durante of the Davao Court of First Instance did not elevate the bank's Exhibits 1-A and 1-B, the expediente of the city court case and the promissory note, respectively. Such an omission, whether deliberate or inadvertent, is highly censurable. Felicia C. Julaton of Branch 3 of the city court had to forward to this Court carbon copies of the record.

In this appeal, the bank's contentions may be reduced to the issue of whether there was malicious prosecution of Contreras. He did not file any brief.

We hold that the trial court and the Appellate Court erred in holding that there was malicious prosecution within the meaning of articles 2217 and 2219(8) of the Civil Code. The action to collect the P250 was filed with *uberrima fides*. It was not an act of malevolence designed to harass or embarrass Contreras. The amount was overdue. The complaint was dismissed before summons was served on Contreras (See *Bagumbayan Corporation vs. Intermediate Appellate Court*, G. R. No. 66274, September 30, 1984).

Generally, *denuncia falsa* or malicious prosecution refers to unfounded criminal actions (*Madera vs. Lopez*, L-37105, February 10, 1981, 102 SCRA 700).

The term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause (*Buchanan vs. Vda. de Esteban*, 32, Phil. 363, 365).

Thus, defendant's counterclaim for damages against what he considers a vexatious and baseless complaint is based on the theory of malicious prosecution (See *RFC vs. Koh*, 114 Phil. 456, 461).

In this case, Contreras filed in the municipal court a counterclaim for P80,000 which he announced would be the object of a separate complaint in the proper forum. His answer was a voluntary appearance because, as already noted, he was not served with summons.

The controlling precedent is found in *Inhelder Corporation vs. Court of Appeals*, G. R. No. 52358, May 30, 1983, 122 SCRA 576. It was held therein that the erroneous filing of a collection suit for P561 did not entitle the defendants to an award of P41,550 as actual and exemplary damages, the amount adjudged by the Appellate Court. The elements of malice and lack of probable cause were absent.

In the *Inhelder* case, it appears that on January 28, 1975 Doctor Daniel Panganiban and his wife mailed a check from Calapan, Oriental Mindoro to *Inhelder Corporation* in Mandaluyong, Metro Manila in payment of his debt of P561. *Inhelder* acknowledged receipt of the check in its letter of February 19, 1975.

Ignorant of such payment, *Inhelder's* lawyer filed in the municipal court of Mandaluyong on February 12, 1975 an

action for the collection of P561. Panga-niban's defense was payment. The municipal court in its order of May 14, 1975 dismissed the action.

Then, the Panganibans in turn sued Inhelder in the Court of First Instance of Calapan for malicious prosecution. The Mindoro court awarded them gargantuan damages of P212,550 which, as already noted, was reduced by the Appellate Court to P41,550. This Court dismissed the complaint. The award of damages was reversed and set aside.

As observed by Chief Justice Fernando, the expenses and annoyance of litigation form part of the social burden of living in a society which seeks to attain social control through law (*Dioquino vs. Laureano*, L-25906, May 28, 1970, 33 SCRA 65, 72 citing *Petroleum Exploration vs. Public Service Commission*, 304 US 209).

A long catena of cases supports the proposition that moral damages are not recoverable for unsuccessful suits filed in good faith (*R & B Surety & Insurance Co., Inc. vs. Intermediate Appellate Court*, G. R. No. 64515, June 22, 1984; *Panay Electric Co., Inc. vs. Court of Appeals*, G. R. No. 59647, December 27, 1982, 119 SCRA 456; *San Miguel Brewery vs. Magno*, 128 Phil. 328; *Luna vs. Santos*, 115 Phil. 50; *Salao vs. Salao*, L-26699, March 16, 1976, 70 SCRA 65, 86; *Ramos vs. Ramos*, L-19872, December 3, 1974, 61 SCRA 284; *Solis & Yarisantos vs. Salvador*, 122 Phil. 223; *Sison vs. David*, 110 Phil. 662; *Grapilon vs. Municipal Council of Carigara*, 112 Phil. 24; *NARIC vs. Antonio and Capital Ins. & Surety Co.*, 112 Phil. 536; *Laurel-Manila vs. Galvan*, 126 Phil. 525; *De los Santos vs. Palanca*, 118 Phil. 765; *Cachuela vs. Castillo*, 116 Phil. 302).

With respect to the award for exemplary or corrective damages, the same is likewise devoid of any legal and factual basis. We have found that Contreras' claim of malicious prosecution is more imaginary than real.

The bank's last contention is that Contreras was the one motivated by malevolence or ill-will in bringing this action. Therefore, the bank's counterclaim for moral damages of P25,000 and litigation expenses of P10,000 should be allowed.

The dictates of justice do not sanction that contention. As a rule, there should be no penalty on the right to litigate. The bank's counterclaim is dismissed.

WHEREFORE, the decisions of the Appellate Court and the trial court are reversed and set aside. The complaint is dismissed. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Escolin, and Cuevas, JJ., concur.

Abad Santos, J., see part concurrence and dissent.

Makasiar (Chairman), J., no part.

CONCURRING AND DISSENTING OPINION

ABAD SANTOS, J.:

The suit against the bank filed by the Villariza spouses and Atty. Contreras was a nuisance suit arising from their over-blown self-esteem. Accordingly, on the bank's counterclaim it should be awarded temperate damages of P1,000. To this extent I cannot assent to the ponencia of Justice Aquino.

Incidentally, the record does not show whether there was a pre-trial. If there was, it was a poor judge who could

not effect an amicable settlement on such a simple matter. If there was none, the judge deserves a censure for not doing what he should have done.

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