

**MAXIMINO SOLIMAN, JR., REPRESENTED BY HIS JUDICIAL
GUARDIAN VIRGINIA C. SOLIMAN, PETITIONER, VS. HON. JUDGE
RAMON TUAZON, PRESIDING JUDGE OF BRANCH LXI, REGIONAL
TRIAL COURT O...**

G.R. No. 66207. May 18, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 22 March 1983, petitioner Soliman, Jr. filed a civil complaint for damages against private respondent Republic Central Colleges ("Colleges"), the R.L. Security Agency Inc. and one Jimmy Solomon, a security guard, as defendants. The complaint alleged that:

"x x x on 13 August 1982, in the morning thereof, while the plaintiff was in the campus ground and premises of the defendant, REPUBLIC CENTRAL COLLEGES, as he was and is still a regular enrolled student of said school taking his morning classes, the defendant, JIMMY B. SOLOMON, who was on said date and hour in the premises of said school performing his duties and obligations as a duly appointed security guard under the employment, supervision and control of his employer-defendant R.L. SECURITY AGENCY, INC., headed by Mr. Benjamin Serrano, without any provocation, in a wanton, fraudulent, reckless, oppressive or malevolent manner, with intent to kill, attack, assault, strike and shoot the plaintiff on the abdomen with a .38 Caliber Revolver, a deadly weapon, which ordinarily such wound sustained would have caused plaintiff's death were it not for the timely medical assistance given to him. The plaintiff was treated and confined at Angeles Medical Center, Angeles City, and, as per doctor's opinion, the plaintiff may not be able to attend to his regular classes and will be incapacitated in the performance of his usual work for a duration of from three to four months before his wounds would be completely healed."[1]

Private respondent Colleges filed a motion to dismiss, contending that the complaint stated no cause of action against it. Private respondent argued that it is free from any liability for the injuries sustained by petitioner student for the reason that private respondent school was not the employer of the security guard charged, Jimmy Solomon, and hence was not responsible for any wrongful act of Solomon. Private respondent school further argued that Article 2180, 7th paragraph, of the Civil Code did not apply, since said paragraph holds teachers and heads of establishment of arts and trades liable for damages caused by their pupils and students or apprentices, while security guard Jimmy Solomon was not a pupil, student or apprentice of the school.

In an order dated 29 November 1983, respondent Judge granted private respondent school's motion to dismiss, holding that security guard Jimmy Solomon was not an employee of the school which accordingly could not be held liable for his acts or omissions. Petitioner moved for reconsideration, without success.

In this Petition for Certiorari and Prohibition, it is contended that respondent trial judge committed a grave abuse of discretion when he refused to apply the provisions of Article 2180, as well as those of Articles 349, 350 and 352, of the Civil Code and granted the school's motion to dismiss.

Under Article 2180 of the Civil Code, the obligation to respond for damage inflicted by one against another by fault or negligence exists not only for one's own act or omission, but also for acts or omissions of a person for whom one is by law responsible. Among the persons held vicariously responsible for acts or omissions of another person are the following:

"xxx xxx xxx

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.

xxx xxx xxx

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils, their students or apprentices, so long as they remain in their custody.

xxx xxx xxx"

The first paragraph quoted above offers no basis for holding the Colleges liable for the alleged wrongful acts of security guard Jimmy B. Solomon inflicted upon petitioner Soliman, Jr. Private respondent school was not the employer of Jimmy Solomon. The employer of Jimmy Solomon was the R.L. Security Agency Inc., while the school was the client or customer of the R.L. Security Agency Inc. It is settled that where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards or watchmen.[2] Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency.[3] As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it, the duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards. The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency. There being no employer-employee relationship between the Colleges and Jimmy Solomon, petitioner student cannot impose vicarious liability upon the Colleges for the acts of security guard Solomon.

Since there is no question that Jimmy Solomon was not a pupil or student or an apprentice of the Colleges, he being in fact an employee of the R.L. Security Agency Inc., the other above-quoted paragraph of Article 2180 of the Civil Code is similarly not available for imposing liability upon the Republic Central Colleges for the acts or omissions of Jimmy Solomon.

The relevant portions of the other Articles of the Civil Code invoked by petitioner are as follows:

"Art. 349. The following persons shall exercise substitute parental authority:

x x x x x x x x

(2) Teachers and professors;

x x x x x x x x

(4) Directors of trade establishments with regard to apprentices;

x x x x x x x x

Art. 350. The persons named in the preceding article shall exercise reasonable supervision over the conduct of

the child.

x x x x x x x x

Art. 352. The relations between teacher and pupil, professor and student are fixed by government regulations and those of each school or institution. In no case shall corporal punishment be countenanced. The teacher or professor shall cultivate the best potentialities of the heart and mind of the pupil or student."

In *Palisoc v. Brillantes*,^[4] invoked by petitioner, the Court held the owner and president of a school of arts and trades known as the "Manila Technical Institute," Quezon Blvd., Manila, responsible in damages for the death of Dominador Palisoc, a student of that Institute, which resulted from fist blows delivered by Virgilio L. Daffon, another student of the Institute. It will be seen that the facts of *Palisoc v. Brillantes* brought it expressly within the 7th paragraph of Article 2180, quoted above; but those facts are entirely different from the facts existing in the instant case.

Persons exercising substitute parental authority are made responsible for damage inflicted upon a third person by the child or person subject to such substitute parental authority. In the instant case, as already noted, Jimmy Solomon who committed allegedly tortious acts resulting in injury to petitioner, was not a pupil, student or apprentice of the Republic Central Colleges; the school had no substitute parental authority over Solomon.

Clearly, within the confines of its limited logic, i.e., treating the petitioner's claim as one based wholly and exclusively on Article 2180 of the Civil Code, the order of the respondent trial judge was correct. Does it follow, however, that respondent Colleges could not be held liable upon any other basis in law, for or in respect of the injury sustained by petitioner, so as to entitle respondent school to dismissal of petitioner's complaint in respect of itself?

The very recent case of the *Philippine School of Business Administration (PSBA) v. Court of Appeals*,^[5] requires us to give a negative answer to that question.

In *PSBA*, the Court held that Article 2180 of the Civil Code was not applicable where a student had been injured by one who was an outsider or by one over whom the school did not exercise any custody or control or supervision. At the same time, however, the Court stressed that an implied contract may be held to be established between a school which accepts students for enrollment, on the one hand, and the students who are enrolled, on the other hand, which contract results in obligations for both parties:

"When an academic institution accepts students for enrollment, there is established a contract between them, resulting in bilateral obligations which parties are bound to comply with. For its part, the school undertakes to provide the student with an education that would presumably suffice to equip him with the necessary tools and skills to pursue higher education or a profession. On the other hand, the student covenants to abide by the school's academic requirements and observe its rules and regulations.

Institutions of learning must also meet the implicit or 'built-in' obligation of providing their students with an atmosphere that promotes or assists in attaining its primary undertaking of imparting knowledge. Certainly, no student can absorb the intricacies of physics or higher mathematics or explore the realm of the arts and other sciences when bullets are flying or grenades exploding in the air or where there looms around the school premises a constant threat to life and limb. Necessarily, the school must ensure that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof."^[6]

In that case, the Court was careful to point out that:

"In the circumstances obtaining in the case at bar, however, there is, as yet, no finding that the contract between the school and Bautista had been breached thru the former's negligence in providing proper security

measures. This would be for the trial court to determine. And, even if there be a finding of negligence, the same could give rise generally to a breach of contractual obligation only. Using the test of *Cangco*, supra, the negligence of the school would not be relevant absent a contract. In fact, that negligence becomes material only because of the contractual relation between PSBA and Bautista. In other words, a contractual relation is a condition sine qua non to the school's liability. The negligence of the school cannot exist independently of the contract, unless the negligence occurs under the circumstances set out in Article 21 of the Civil Code.

The Court is not unmindful of the attendant difficulties posed by the obligation of schools, above-mentioned, for conceptually a school, like a common carrier, cannot be an insurer of its students against all risks. This is especially true in the populous student communities of the so-called 'university belt' in Manila where there have been reported several incidents ranging from gang wars to other forms of hooliganism. It would not be equitable to expect of schools to anticipate all types of violent trespass upon their premises, for notwithstanding the security measures installed, the same may still fail against an individual or group determined to carry out a nefarious deed inside school premises and environs. Should this be the case, the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence, here statutorily defined to be the omission of that degree of diligence which is required by the nature of obligation and corresponding to the circumstances of person, time and place."^[7]

In the PSBA case, the trial court had denied the school's motion to dismiss the complaint against it, and both the Court of Appeals and this Court affirmed the trial court's order. In the case at bar, the court a quo granted the motion to dismiss filed by respondent Colleges, upon the assumption that petitioner's cause of action was based, and could have been based, only on Article 2180 of the Civil Code. As PSBA, however, states, acts which are tortious or allegedly tortious in character may at the same time constitute breach of a contractual, or other legal, obligation. Respondent trial judge was in serious error when he supposed that petitioner could have no cause of action other than one based on Article 2180 of the Civil Code. Respondent trial judge should not have granted the motion to dismiss but rather should have, in the interest of justice, allowed petitioner to prove acts constituting breach of an obligation ex contractu or ex lege on the part of respondent Colleges.

In line, therefore, with the most recent jurisprudence of this Court, and in order to avoid a possible substantial miscarriage of justice, and putting aside technical considerations, we consider that respondent trial judge committed serious error correctible by this Court in the instant case.

ACCORDINGLY, the Court Resolved to GRANT DUE COURSE to the Petition, to TREAT the comment of respondent Colleges as its answer, and to REVERSE and SET ASIDE the Order dated 29 November 1983. This case is REMANDED to the court a quo for further proceedings consistent with this Resolution.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Complaint, p. 2; Rollo, p. 10.

[2] *American President Lines v. Clave*, 114 SCRA 829 (1982).

[3] *Social Security System v. Court of Appeals*, 39 SCRA 629 (1971).

[4] 41 SCRA 548 (1971).

[5] G.R. No. 84698, 4 February 1992.

[6] *Id.*

[7] *Id.*

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