

CITY OF MANILA, AND EVANGELINE SUVA, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT, IRENE STO. DOMINGO AND FOR AND IN BEHALF OF HER MINOR CHILDREN, VIVENCIO, JR., IRIS, VER...

G.R. No. 71159. November 15, 1989

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-71159/>

PARAS, J.:

This is a petition for review on certiorari seeking to reverse and set aside: (a) the Decision of the Intermediate Appellate Court now Court of Appeals[1] promulgated on May 31, 1984 in AC-G.R. CV No. 00613-R entitled *Irene Sto. Domingo et al. v. City Court of Manila et al.*, modifying the decision of the then Court of First Instance of Manila, Branch VIII[2] in Civil Case No. 121921 ordering the defendants (herein petitioners) to give plaintiffs (herein private respondents) the right to use a burial lot in the North Cemetery corresponding to the unexpired term of the fully paid lease sued upon, to search the remains of the late Vivencio Sto. Domingo, Sr. and to bury the same in a substitute lot to be chosen by the plaintiffs; and (b) the Resolution of the Court of Appeals dated May 28, 1985 denying petitioner's motion for reconsideration.

As found by the Court of Appeals and the trial court, the undisputed facts of the case are as follows:

"Brought on February 22, 1979 by the widow and children of the late Vivencio Sto. Domingo, Sr. was this action for damages against the City of Manila; Evangelina Suva of the City Health Office; Sergio Mallari, officer-in-charge of the North Cemetery; and Joseph Helmuth, the latter's predecessor as officer-in-charge of the said burial grounds owned and operated by the City Government of Manila.

"Vivencio Sto. Domingo, Sr. deceased husband of plaintiff Irene Sto. Domingo and father of the litigating minors, died on June 4, 1971 and buried on June 6, 1971 in Lot No. 159, Block No. 194 of the North Cemetery which lot was leased by the city to Irene Sto. Domingo for the period from June 6, 1971 to June 6, 2021 per Official Receipt No. 61307 dated June 6, 1971 (see Exh. A) with an expiry date of June 6, 2021 (see Exh. A-1). Full payment of the rental therefor of P50.00 is evidenced by the said receipt which appears to be regular on its face. Apart from the aforementioned receipt, no other document was executed to embody such lease over the burial lot in question. In fact, the burial record for Block No. 194 of Manila North Cemetery (see Exh. 2) in which subject Lot No. 159 is situated does not reflect the term of duration of the lease thereover in favor of the Sto. Domingos.

"Believing in good faith that, in accordance with Administrative Order No. 5, Series of 1975, dated March 6, 1975, of the City of Mayor of Manila (See Exh. 1) prescribing uniform procedure and guidelines in the processing of documents pertaining to and for the use and disposition of burial lots and plots within the North Cemetery, etc., subject Lot No. 159 of Block 194 in which the mortal remains of the late Vivencio Sto. Domingo were laid to rest, was leased to the bereaved family for five (5) years only, subject lot was certified on January 25, 1978 as ready for exhumation.

"On the basis of such certification, the authorities of the North Cemetery then headed by defendant Joseph

Helmuth authorized the exhumation and removal from subject burial lot the remains of the late Vivencio Sto. Domingo, Sr., placed the bones and skull in a bag or sack and kept the same in the depository or bodega of the cemetery. Subsequently, the same lot in question was rented out to another lessee so that when the plaintiffs herein went to said lot on All Souls Day in their shock, consternation and dismay, that the resting place of their dear departed did not anymore bear the stone marker which they lovingly placed on the tomb. Indignant and disgusted over such a sorrowful finding, Irene Sto. Domingo lost no time in inquiring from the officer-in-charge of the North Cemetery, defendant Sergio Mallari, and was told that the remains of her late husband had been taken from the burial lot in question which was given to another lessee.

"Irene Sto. Domingo was also informed that she can look for the bones of her deceased husband in the warehouse of the cemetery where the exhumed remains from the different burial lots of the North Cemetery are being kept until they are retrieved by interested parties. But to the bereaved widow, what she was advised to do was simply unacceptable. According to her, it was just impossible to locate the remains of her late husband in a depository containing thousands upon thousands of sacks of human bones. She did not want to run the risk of claiming for the wrong set of bones. She was even offered another lot but was never appeased. She was too aggrieved that she came to court for relief even before she could formally present her claims and demands to the city government and to the other defendants named in the present complaint." (Decision, Court of Appeals pp. 2-3; Rollo, pp. 34-55)

The trial court, on August 4, 1981, rendered its Decision, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered, ordering the defendants to give plaintiffs the right to make use of another single lot within the North Cemetery for a period of forty-three (43) years, four (4) months and eleven (11) days, corresponding to the unexpired term of the fully paid lease sued upon; and to search without let up and with the use of all means humanly possible, for the remains of the late Vivencio Sto. Domingo, Sr. and thereafter, to bury the same in the substitute lot to be chosen by plaintiffs pursuant to this decision.

"For want of merit, defendant's counterclaim is DISMISSED.

"No pronouncement as to costs.

"SO ORDERED." (Rollo, p. 31)

The decision was appealed to the Court of Appeals which on May 31, 1984 rendered a decision (Rollo, pp. 33-40) modifying the decision appealed from, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the decision appealed from is hereby REVERSED (is hereby modified) and another one is hereby entered:

"1. Requiring in full force the defendants to look in earnest for the bones and skull of the late Vivencio Sto. Domingo, Sr., and to bury the same in the substitute lot adjudged in favor of plaintiffs hereunder;

"2. Ordering defendants to pay plaintiffs-appellants jointly and severally P10,000.00 for breach of contract;

"3. Ordering defendants to pay plaintiffs-appellants, jointly and severally, P20,000.00 for moral damages;

"4. Ordering defendants to pay plaintiffs-appellants jointly and severally, P20,000.00 for exemplary damages;

"5. Ordering defendants to pay plaintiffs-appellants, jointly and severally, P10,000.00 as and for attorney's fees;

"6. Ordering defendants, to pay plaintiffs-appellants, jointly and severally, on the foregoing amounts legal rate of interest computed from filing hereof until fully paid; and

"7. Ordering defendants, to pay plaintiffs-appellants, jointly and severally, the cost of suit.

"SO ORDERED." (Rollo, p. 40)

The petitioners' motion for reconsideration was likewise denied.

Hence, this instant petition (Rollo, pp. 7-27) filed on July 27, 1985.

The grounds relied upon for this petition are as follows:

I

THE HONORABLE INTERMEDIATE APPELLATE COURT ERRED IN AWARDING DAMAGES AGAINST THE PETITIONERS HEREIN, NOTWITHSTANDING THEIR GOOD FAITH AND THEIR LACK OF KNOWLEDGE OR CONSENT TO THE REMOVAL OF THE SKELETAL REMAINS OF THE LATE VIVENCIO STO. DOMINGO, SR. FROM THE SUBJECT BURIAL LOT.

II

THE HON. INTERMEDIATE APPELLATE COURT ERRED IN HOLDING PETITIONERS HEREIN RESPONSIBLE FOR THE ALLEGED TORTS OF THEIR SUBORDINATE OFFICIALS AND EMPLOYEES, INSPITE OF THE PROVISIONS OF SECTION 4 OF THE REPUBLIC ACT NO. 409 (REVISED CHARTER OF MANILA) AND OTHER APPLICABLE JURISPRUDENCE ON THE SUBJECT EXEMPTING THE PETITIONERS FROM DAMAGES FROM THE MALFEASANCE OR MISFEASANCE OF THEIR OFFICIALS AND EMPLOYEES, IF THERE BE ANY IN THIS CASE.

(Brief for Petitioners, Rollo, pp. 93-94)

In the resolution dated November 13, 1985 (Rollo, p. 84), the petition was given due course.

The pivotal issue of this case is whether or not the operations and functions of a public cemetery are a governmental, or a corporate or proprietary function of the City of Manila. The resolution of this issue is essential to the determination of the liability for damages of the petitioner city.

Petitioners alleged in their petition that the North Cemetery is exclusively devoted for public use or purpose as stated in Sec. 316 of the Compilation of the Ordinances of the City of Manila. They conclude that since the City is a political subdivision in the performance of its governmental function, it is immune from tort liability which may be caused by its public officers and subordinate employees. Further Section 4, Article I of the Revised Charter of Manila exempts the city from liability for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provision of its charter or any other laws, or ordinance, or from negligence of said Mayor, Municipal Board or any other officers while enforcing or attempting to enforce said provisions. They allege that the Revised Charter of Manila being a special law cannot be defeated by the Human Relations provisions of the Civil Code being a general law.

Private respondents on the other hand maintain that the City of Manila entered into a contract of lease which involve the exercise of proprietary functions with private respondent Irene Sto. Domingo. The city and its officers therefore can be sued for any violation of the contract of lease.

Private respondents' contention is well-taken.

Under Philippine laws, the City of Manila is a political body corporate and as such endowed with the faculties of municipal corporations to be exercised by and through its city government in conformity with law, and in its proper corporate name. It may sue and be sued, and contract and be contracted with. Its powers are twofold in character-public, governmental or political on the one hand, and corporate, private and proprietary on the other. Governmental powers are those exercised in administering the powers of the state and promoting the public

welfare and they include the legislative, judicial, public and political. Municipal powers on the one hand are exercised for the special benefit and advantage of the community and include those which are ministerial, private and corporate. In *Mc Quillin on Municipal Corporation*, the rule is stated thus: "A municipal corporation proper has . . . a public character as regards the state at large insofar as it is its agent in government, and private (so called) insofar as it is to promote local necessities and conveniences for its own community (*Torio v. Fontanilla*, 85 SCRA 599 [1978]). In connection with the powers of a municipal corporation, it may acquire property in its public or governmental capacity, and private or proprietary capacity. The New Civil Code divides such properties into property for public use and patrimonial properties (Article 423), and further enumerates the properties for public use as provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities or municipalities, all other property is patrimonial without prejudice to the provisions of special laws (Article 424; *Province of Zamboanga del Norte v. City of Zamboanga, et al.*, 22 SCRA 1334 [1968]).

Thus in *Torio v. Fontanilla*, supra, the Court declared that with respect to proprietary functions the settled rule is that a municipal corporation can be held liable to third persons *ex contractu* (*Municipality of Moncada v. Cajuigan, et al.*, 21 Phil. 184 (1912) or *ex delicto* (*Mendoza v. de Leon*, 33 Phil. 508 (1916)).

The Court further stressed:

"Municipal corporations are subject to be sued upon contracts and in tort. x x x

x x x x x x x x

"The rule of law is a general one, that the superior or employer must answer civilly for the negligence or want of skill of its agent or servant in the course or line of his employment, by which another, who is free from contributory fault, is injured. Municipal corporations under the conditions herein stated, fall within the operation of this rule of law, and are liable accordingly, to civil actions for damages when the requisite elements of liability coexist. x x x (Underscoring supplied)

The Court added:

"x x x while the following are corporate or proprietary in character, viz: municipal waterworks, slaughter houses, markets, stables, bathing establishments, wharves, ferries and fisheries. Maintenance of parks, golf courses, cemeteries and airports among others, are also recognized as municipal or city activities of a proprietary character. (*Dept. of Treasury v. Coity of Evansville, Sup. Ct. of Indiana*, 60 N. E. 2nd 952, 954 cited in *Torio v. Fontanilla*, supra) (Underscoring supplied)

Under the foregoing considerations and in the absence of a special law, the North Cemetery is a patrimonial property of the City of Manila which was created by resolution of the Municipal Board on August 27, 1903 and January 7, 1904 (Petition, Rollo pp. 20-21 Compilation of the Ordinances of the City of Manila). The administration and government of the cemetery are under the City Health Officer (*Ibid.*, Sec. 3189), the order and police of the cemetery (*Ibid.*, Sec. 319), the opening of graves, niches, or tombs, the exhuming of remains, and the purification of the same (*Ibid.*, Sec. 327) are under the charge and responsibility of the superintendent of the cemetery. The City of Manila furthermore prescribes the procedure and guidelines for the use and dispositions of burial lots and plots within the North Cemetery through Administrative Order No. 5, s. 1975 (Rollo, p. 44). With the acts of dominion, there is, therefore no doubt that the North Cemetery is within the class of property which the City of Manila owns in its proprietary or private character. Furthermore, there is no dispute that the burial lot was leased in favor of the private respondents. Hence, obligations arising from contracts have the force of law between the contracting parties. Thus a lease contract executed by the lessor and lessee remains as the law between them. (*Henson v. Intermediate Appellate Court*, 148 SCRA 11 [1987]). Therefore, a breach of contractual provision

entitles the other party to damages even if no penalty for such breach is prescribed in the contract. (*Boysaw v. Interphil Promotions, Inc.* 148 SCRA 635 [1987]).

Noteworthy are the findings of the Court of Appeals as to the harrowing experience of private respondents and their wounded feelings upon discovery that the remains of their loved one were exhumed without their knowledge and consent, as said Court declared:

"It has been fully established that the appellants, in spite or perhaps because, of their lowly station in life have found great consolation in their bereavement from the loss of their family head, by visiting his grave on special or even ordinary occasions, but particularly on All Saints Day, in keeping with the deep, beautiful and Catholic Filipino tradition of revering the memory of their dead. It would have been but fair and equitable that they were notified of the intention of the city government to transfer the skeletal remains of the late Vivencio Sto. Domingo to give them an opportunity to demand the faithful fulfillment of their contract, or at least to prepare and make provisions for said transfer in order that they would not lose track of the remains of their beloved dead, as what has actually happened on this case. We understand fully what the family of the deceased must have felt when on All Saints Day of 1978, they found a new marker on the grave they were to visit, only to be told to locate their beloved dead among thousands of skeletal remains which to them was desecration and an impossible task. Even the lower court recognized this when it stated in its decision thus:

‘All things considered, even as the Court commiserates with plaintiffs for the unfortunate happening complained of and untimely desecration of the resting place and remains of their deceased dearly beloved, it finds the reliefs prayed for by them lacking in legal and factual basis. Under the aforementioned facts and circumstances, the most that plaintiffs can ask for is the replacement of subject lot with another lot of equal size and similar location in the North Cemetery which substitute lot plaintiffs can make use of without paying any rental to the city government for a period of forty-three (43) years, four (4) months and eleven (11) days corresponding to the unexpired portion of the term of the lease sued upon as of January 25, 1978 when the remains of the late Vivencio Sto. Domingo, Sr. were prematurely removed from the disputed lot; and to require the defendants to look in earnest for the bones and skull of the late Vivencio Sto. Domingo Sr. and to bury the same in the substitute lot adjudged in favor of plaintiffs hereunder.’”

(Decision, Intermediate Appellate Court, p. 7, Rollo, p. 39)

As regards the issue of the validity of the contract of lease of grave lot No. 159, Block No. 195 of the North Cemetery for 50 years beginning from June 6, 1971 to June 6, 2021 as clearly stated in the receipt duly signed by the deputy treasurer of the City of Manila and sealed by the city government, there is nothing in the record that justifies the reversal of the conclusion of both the trial court and the Intermediate Appellate Court to the effect that the receipt is in itself a contract of lease. (Decision, Intermediate Appellate Court, p. 3, Rollo, pp. 5-6).

Under the doctrine of respondeat superior, (*Torio v. Fontanilla*, supra), petitioner City of Manila is liable for the tortious act committed by its agents who failed to verify and check the duration of the contract of lease. The contention of the petitioner-city that the lease is covered by Administrative Order No. 5, series of 1975 dated March 6, 1975 of the City of Manila for five (5) years only beginning from June 6, 1971 is not meritorious for the said administrative order covers new leases. When subject lot was certified on January 25, 1978 as ready for exhumation, the lease contract for fifty (50) years was still in full force and effect.

PREMISES CONSIDERED, the Decision of the Intermediate Appellate Court is hereby AFFIRMED.

SO ORDERED.

Padilla, Sarmiento, and Regalado, JJ., concur.

Melencio-Herrera, (Chairman), J., on leave.

[1] Penned by Justice Ma. Rosario Quetulio-Losa, concurred in by Justices Ramon G. Gaviola, Jr. and Eduardo P. Caguioa.

[2] Presided over by Judge Fidel P. Purisima

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.