

RAMON FAROLAN AS ACTING COMMISSIONER OF CUSTOMS, AND GUILLERMO PARAYNO, AS CHIEF OF CUSTOMS INTELLIGENCE AND INVESTIGATION DIVISION, PETITIONERS, VS. SOLMAC MARKETING CORPORATIO...*G.R. No. 83589. March 13, 1991*

Ponente: SARMIENTO, J.

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This petition for review on certiorari, instituted by the Solicitor General on behalf of the public officers-petitioners, seeks the nullification and setting aside of the Resolution[1] dated May 25, 1988 of the Court of Appeals in CA-G.R. No. SP-10509, entitled "Solmac Marketing Corporation vs. Ramon Farolan, Acting Commissioner of Customs, and Guillermo Parayno, Chief of Customs Intelligence and Investigation Division," which adjudged these public officers to pay solidarily and in their private personal capacities respondent Solmac Marketing Corporation temperate damages in the sum of P100,000.00, exemplary damages in the sum of P50,000.00, and P25,000.00, as attorney's fees and expenses of litigation. This challenged resolution of the respondent court modified its decision[2] of July 27, 1987 by reducing into halves the original awards of P100,000.00 and P50,000.00 for exemplary damages and attorney's fees and litigation expenses, respectively, keeping intact the original grant of P100,000.00 in the concept of temperate damages. (Strangely, the first name of petitioner Farolan stated in the assailed resolution, as well as in the decision, of the respondent court is "Damian" when it should be "Ramon", his correct given name. Strictly speaking, petitioner Ramon Farolan could not be held liable under these decision and resolution for he is not the one adjudged to pay the huge damages but a different person. Nonetheless, that is of no moment now considering the disposition of this ponencia.)

The relevant facts, as culled from the records, are as follows:

At the time of the commission of the acts complained of by the private respondent, which was the subject of the latter's petition for mandamus and injunction filed with the Regional Trial Court (RTC) of Manila in Civil Case No. 84-23537, petitioner Ramon Farolan was then the Acting Commissioner of Customs while petitioner Guillermo Parayno was then the Acting Chief, Customs Intelligence and Investigation Division. They were thus sued in their official capacities as officers in the government as clearly indicated in the title of the case in the lower courts and even here in this Court. Nevertheless, they were both held personally liable for the awarded damages "(s)ince the detention of the goods by the defendants (petitioners herein) was irregular and devoid of legal basis, hence, not done in the regular performance of official duty x x x." [3] However, as adverted to at the outset, in the dispositive portion of the challenged resolution, the one held personally liable is a "Damian Farolan" and not the petitioner, Ramon Farolan. Also as earlier mentioned, we will ignore that gross error.

Private respondent Solmac Marketing Corporation is a corporation organized and existing under the laws of the Philippines. It was the assignee, transferee, and owner of an importation of Clojus Recycling Plastic Products of 202,204 kilograms of what is technically known as polypropylene film, valued at US\$69,250.05.

Polypropylene is a substance resembling polyethylene which is one of a group of partially crystalline lightweight thermoplastics used chiefly in making fibers, films, and molded and extruded products.[4] Without defect, polypropylene film is sold at a much higher price as prime quality film. Once rejected as defective due to blemishes, discoloration, defective winding, holes, etc., polypropylene film is sold at a relatively cheap price without guarantee or return, and the buyer takes the risk as to whether he can recover an average 30% to 50% usable matter.[5] This latter kind of polypropylene is known as OPP film waste/scrap and this is what respondent SOLMAC claimed the Clojus shipment to be.

The subject importation, consisting of seventeen (17) containers, arrived in December 1981. Upon application for entry, the Bureau of Customs asked respondent SOLMAC for its authority from any government agency to import the goods described in the bill of lading. Respondent SOLMAC presented a Board of Investment (BOI) authority for polypropylene film scrap. However, upon examination of the shipment by the National Institute of Science and Technology (NIST), it turned out that the fibers of the importation were oriented in such a way that the materials were stronger than OPP film scrap.[6] In other words, the Clojus shipment was not OPP film scrap, as declared by the assignee respondent SOLMAC to the Bureau of Customs and BOI Governor Lilia R. Bautista, but oriented polypropylene the importation of which is restricted, if not prohibited, under Letter of Instructions (LOI) No. 658-B. Specifically, Sections 1 and 2 of LOI No. 658-B provide that:

x x x x x x x x

1. The importation of cellophane shall be allowed only for quantities and types of cellophane that cannot be produced by Philippine Cellophane Film Corporation. The Board of Investments shall issue guidelines regulating such importations.
2. The Collector of Customs shall see to the apprehension of all illegal importations of cellophane and oriented polypropylene (OPP) and the dumping of imported stock lots of cellophane and OPP.

x x x x x x x x

Considering that the shipment was different from what had been authorized by the BOI and by law, petitioners Parayno and Farolan withheld the release of the subject importation.

On June 7, 1982, petitioner Parayno, then Chief of Customs Intelligence and Investigation Division, wrote the BOI asking for the latter's advice on whether or not the subject importation may be released.[7] A series of exchange of correspondence between the BOI and the Bureau of Customs, on one hand, and between the late Dakila Castro, counsel for the private respondent, and the BOI and the Bureau of Customs, on the other, ensued, to wit:

x x x x x x x x

4. In a letter dated August 17, 1982, the BOI agreed that the subject imports may be released but that holes may be drilled on them by the Bureau of Customs prior to their release.
5. On January 20, 1983, (the late) Atty. Dakila Castro, (then) counsel of private respondent wrote to petitioner Commissioner Farolan of Customs asking for the release of the importation. The importation was not released, however, on the ground that holes had to be drilled on them first.
6. Atty. Dakila Castro then wrote a letter dated October 6, 1983, to BOI Governor Hermenigildo Zayco stressing the reasons why the subject importation should be released without drilling of holes.
7. On November 8, 1983, BOI Governor H. Zayco wrote a letter to the Bureau of Customs stating that the subject goods may be released without drilling of holes inasmuch as the goods arrived prior to the endorsement on August 17, 1982 to the drilling of holes on all importations of waste/scrap films.

8. On February 1, 1984, petitioner Commissioner Farolan wrote the BOI requesting for definite guidelines regarding the disposition of importations of Oriented Polypropylene (OPP) and Polypropylene (PP) then being held at the Bureau of Customs.

9. On March 12, 1984, Minister Roberto Ongpin of Trade, the BOI Chairman, wrote his reply to petitioner Farolan x x x.[8]

(This reply of Minister Ongpin is copied in full infra.)

On March 26, 1984, respondent Solmac filed the action for mandamus and injunction with the RTC as above mentioned. It prayed for the unconditional release of the subject importation. It also prayed for actual damages, exemplary damages, and attorney's fees. As prayed for, the trial court issued a writ of preliminary injunction.

After hearing on the merits, the RTC rendered a decision on February 5, 1985, the dispositive portion of which reads as follows:

Premises considered, judgment is hereby rendered ordering defendants to release the subject importation immediately without drilling of holes, subject only to the normal requirements of the customs processing for such release to be done with utmost dispatch as time is of the essence; and the preliminary injunction hereto issued is hereby made permanent until actual physical release of the merchandise and without pronouncement as to costs.

SO ORDERED.[9]

From the decision of the trial court, Solmac, the plaintiff below and the private respondent herein, appealed to the Court of Appeals only insofar as to the denial of the award of damages is concerned. On the other hand, the petitioners did not appeal from this decision. They did not see any need to appeal because as far as they were concerned, they had already complied with their duty. They had already ordered the release of the importation "without drilling of holes," as in fact it was so released, in compliance with the advice to effect such immediate release contained in a letter of BOI dated October 9, 1984, to Commissioner Farolan. Thus, to stress, even before the RTC rendered its decision on February 5, 1984, the Clojus shipment of OPP was already released[10] to the private respondent in its capacity as assignee of the same. Be that as it may, the private respondent filed its appeal demanding that the petitioners be held, in their personal and private capacities, liable for damages despite the finding of lack of bad faith on the part of the public officers.

After due proceedings, the Court of Appeals rendered a decision[11] on July 27, 1987, the dispositive portion of which reads as follows:

WHEREFORE, the appealed judgment is modified by ordering the defendants Ramon Farolan and Guillermo Parayno solidarily, in their personal capacity, to pay the plaintiff temperate damages in the sum of P100,000, exemplary damages in the sum of P100,000 and P50,000 as attorney's fees and expenses of litigation. Costs against the defendants.

SO ORDERED.

On August 14, 1987, the petitioners filed a motion for reconsideration of the decision of the Court of Appeals.

On May 25, 1988, the Court of Appeals issued its resolution modifying the award of damages, to wit: temperate damages in the sum of P100,000.00, exemplary damages in the sum of P50,000.00, and P25,000.00 as attorney's fees and expenses of litigation. The respondent court explained the reduction of the awards for exemplary damages and attorney's fees and expenses of litigation in this wise:

3. In our decision of July 27, 1987, We awarded to plaintiff-appellant P100,000 as temperate damages,

P100,000.00 as exemplary damages, and P50,000.00 as attorney's fees and expenses of litigation. Under Art. 2233 of the Civil Code, recovery of exemplary damages is not a matter of right but depends upon the discretion of the court. Under Article 2208 of the Civil Code, attorney's fees and expenses of litigation must always be reasonable. In view of these provisions of the law, and since the award of temperate damages is only P100,000.00, the amount of exemplary damages may not be at par as temperate damages. An award of P50,000.00, as exemplary damages may already serve the purpose, i.e., as an example for the public good. Likewise, the attorney's fees and expenses of litigation have to be reduced to 25% of the amount of temperate damages, or P25,000.00, if the same have to be reasonable. The reduction in the amount of exemplary damages, and attorney's fees and expenses of litigation would be in accord with justice and fairness.[12]

The petitioners now come to this Court, again by the Solicitor General, assigning the following errors allegedly committed by the respondent court:

I.

The Court of Appeals erred in disregarding the finding of the trial court that the defense of good faith of petitioners (defendants) cannot be discredited.

II.

The Court of Appeals erred in adjudging petitioners liable to pay temperate damages, exemplary damages, attorney's fees and expenses of litigation.[13]

These two issues boil down to a single question, i.e., whether or not the petitioners acted in good faith in not immediately releasing the questioned importation, or, simply, can they be held liable, in their personal and private capacities, for damages to the private respondent.

We rule for the petitioners.

The respondent court committed a reversible error in overruling the trial court's finding that:

... with reference to the claim of plaintiff to damages, actual and exemplary, and attorney's fees, the Court finds it difficult to discredit or disregard totally the defendants' defense of good faith premised on the excuse that they were all the time awaiting clarification of the Board of Investments on the matter:[14]

We hold that this finding of the trial court is correct for good faith is always presumed and it is upon him who alleges the contrary that the burden of proof lies.[15] In *Abando v. Lozada*,^[16] we defined good faith as "refer[ring] to a state of the mind which is manifested by the acts of the individual concerned. It consists of the honest intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is the opposite of fraud, and its absence should be established by convincing evidence."

We had reviewed the evidence on record carefully and we did not see any clear and convincing proof showing the alleged bad faith of the petitioners. On the contrary, the record is replete with evidence bolstering the petitioners' claim of good faith. First, there was the report of the National Institute of Science and Technology (NIST) dated January 25, 1982 that, contrary to what the respondent claimed, the subject importation was not OPP film scraps but oriented polypropylene, a plastic product of stronger material, whose importation to the Philippines was restricted, if not prohibited, under LOI 658-B.[17] It was on the strength of this finding that the petitioners withheld the release of the subject importation for being contrary to law. Second, the petitioners testified that, on many occasions, the Bureau of Customs sought the advice of the BOI on whether the subject importation might be released.[18] Third, petitioner Parayno also testified during the trial that up to that time (of the trial) there was no clear-cut policy on the part of the BOI regarding the entry into the Philippines of oriented polypropylene (OPP), as the letters of BOI Governors Tordesillas and Zayco of November 8, 1983 and September 24, 1982,

respectively, ordering the release of the subject importation did not clarify the BOI policy on the matter. He then testified on the letter of the BOI Chairman Roberto Ongpin dated March 12, 1984, which states in full:

Thank you for your letter of 1 February 1984 on the subject of various importations of Oriented Polypropylene (OPP) and Polypropylene (PP) withheld by Customs and the confusion over the disposition of such imports.

I have discussed the matter with Vice-Chairman Tordesillas and Governor Zayco of the Board of Investments and the following is their explanation:

1. On 22 June 1982, the BOI ruled that importation of OPP/PP film scraps intended for recycling or repelletizing did not fall within the purview of LOI 658-B.
2. On 17 August 1982, the BOI agreed that holes could be drilled on subject film imports to prevent their use for other purposes.
3. For importations authorized prior to 22 June 1982, the drilling of holes should depend on purpose for which the importation was approved by the BOI, that is, for direct packaging use or for recycling/repelletizing into raw material. The exemption from drilling of holes on Solmac Marketing's importations under Certificates of Authority issued on 1 April 1982 and 5 May 1982 and on Clojus' importation authorized in 1982 were endorsed by the BOI on the premise that these were not intended for recycling/repelletizing.

Should your office have any doubts as to the authorized intended use of any imported lots of OPP/PP film scraps that you have confiscated, we have no objection to the drilling of holes to ensure that these are indeed recycled.

I have requested Governor Zayco to contact your office in order to offer any further assistance which you may require.[19]

It can be seen from all the foregoing that even the highest officers (Chairman Ongpin, Vice-Chairman Tordesillas, and Governor Zayco) of the BOI themselves were not in agreement as to what proper course to take on the subject of the various importations of Oriented Polypropylene (OPP) and Polypropylene (PP) withheld by the Bureau of Customs. The conflicting recommendations of the BOI on this score prompted the petitioners to seek final clarification from the former with regard to its policy on these importations. This resulted in the inevitable delay in the release of the Clojus shipment, one of the several of such importations. The confusion over the disposition of this particular importation obviates bad faith. Thus the trial court's finding that the petitioners acted in good faith in not immediately releasing the Clojus shipment pending a definitive policy of the BOI on this matter is correct. It is supported by substantial evidence on record, independent of the presumption of good faith, which as stated earlier, was not successfully rebutted.

When a public officer takes his oath of office, he binds himself to perform the duties of his office faithfully and to use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of his duties, he is to use that prudence, caution, and attention which careful men use in the management of their affairs. In the case at bar, prudence dictated that petitioners first obtain from the BOI the latter's definite guidelines regarding the disposition of the various importations of oriented polypropylene (OPP) and polypropylene (PP) then being withheld at the Bureau of Customs. These cellophane/film products were competing with locally manufactured polypropylene and oriented polypropylene as raw materials which were then already sufficient to meet local demands, hence, their importation was restricted, if not prohibited, under LOI 658-B. Consequently, the petitioners can not be said to have acted in bad faith in not immediately releasing the import goods without first obtaining the necessary clarificatory guidelines from the BOI. As public officers, the petitioners had the duty to see to it that the law they were tasked to implement, i.e., LOI 658-B, was faithfully complied with.

But even granting that the petitioners committed a mistake in withholding the release of the subject importation because indeed it was composed of OPP film scraps,[20] contrary to the evidence submitted by the National Institute of Science and Technology that the same was pure oriented OPP, nonetheless, it is the duty of the Court to see to it that public officers are not hampered in the performance of their duties or in making decisions for fear of personal liability for damages due to honest mistake. Whatever damage they may have caused as a result of such an erroneous interpretation, if any at all, is in the nature of a *damnum absque injuria*. Mistakes concededly committed by public officers are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.[21] After all, "even under the law of public officers, the acts of the petitioners are protected by the presumption of good faith." [22]

In the same vein, the presumption, disputable though it may be, that an official duty has been regularly performed[23] applies in favor of the petitioners. *Omnia praesumuntur rite et solemniter esse acta*. (All things are presumed to be correctly and solemnly done.) It was private respondent's burden to overcome this *juris tantum* presumption. We are not persuaded that it has been able to do so.

WHEREFORE, the petition is hereby GRANTED, the assailed Resolution of the respondent court, in CA-G.R. SP No. 10509, dated May 25, 1988, is SET ASIDE and ANNULLED. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Lantin, M., J., ponente, with Reyes, M.T. and Martinez, A.M., JJ., concurring.

[2] Griño-Aquino, C. J., ponente, with Reyes, M.T. and Lantin, J.M., JJ., concurring.

[3] Decision, CA-G.R. SP No. 10509; rollo, 40.

[4] Webster's Third New International Dictionary.

[5] Letter of Edward Keller of Mobil (Phils.) to Collector of Customs, dated May 7, 1982; Original Record, 27.

[6] Exhibit "5" for the defendants, now the petitioners herein; Original Record, 56.

[7] Exhibit "Q" for the plaintiff, now the private respondent; Original Record, 36.

[8] Rollo, 18-19.

[9] Original Record, 228-238, penned by Judge Florencio B. Cabanos, Branch LIV, Manila, RTC.

[10] Rollo, 25.

[11] Griño-Aquino., C., J., ponente, with Reyes, M.T. and Lantin, J.M., JJ., concurring.

[12] Decision in CA-G.R. No. SP 10509, Court of Appeals; rollo, 34.

[13] Rollo, 22.

[14] Decision in Civil Case No. 84-23537, *supra*, 237.

[15] Article 527, New Civil Code, Rule 131, sec. 5(a), Revised Rules of Court; *U.S. vs. Rafinan*, 1 Phil. 294; see also *Guillen vs. Court of Appeals*, G.R. No. 83175, December 4, 1989, 799.

[16] G.R. 82564, October 13, 1989, 178 SCRA 509; emphasis in the original, citing *Hilario vs. Galvez*, 45494-R,

August 19, 1971.

[17] Rollo, 23.

[18] Id., 60.

[19] Rollo, 122; emphasis in the copied text.

[20] Decision in Civil Case No. 84-23537, Regional Trial Court of Manila.

[21] Dale Sanders, et al. v. Hon. Regino T. Veridiano II, etc., et al., G.R. No. L-46930, June 19, 1988, 162 SCRA 88 (1988).

[22] Supra.

[23] Sec. 5(m), Rule 131, Revised Rules of Court.

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