

ALBENSON ENTERPRISES CORP., JESSE YAP, AND BENJAMIN MENDIONA, PETITIONERS, VS. THE COURT OF APPEALS AND EUGENIO S. BALTAO, RESPONDENTS.

G.R. No. 88694. January 11, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This petition assails the decision of respondent Court of Appeals in CA-GR CV No. 14948 entitled "Eugenio S. Baltao, plaintiff-appellee vs. Albenson Enterprises Corporation, et al, defendants-appellants", which modified the judgment of the Regional Trial Court of Quezon City, Branch XCVIII in Civil Case No. Q-40920 and ordered petitioner to pay private respondent, among others, the sum of P500,000.00 as moral damages and attorney's fees in the amount of P50,000.00.

The facts are not disputed.

In September, October, and November 1980, petitioner Albenson Enterprises Corporation (Albenson for short) delivered to Guaranteed Industries, Inc. (Guaranteed for short) located at 3267 V. Mapa Street, Sta. Mesa, Manila, the mild steel plates which the latter ordered. As part payment thereof, Albenson was given Pacific Banking Corporation Check No. 136361 in the amount of P2,575.00 and drawn against the account of E.L. Woodworks (Rollo, p. 148).

When presented for payment, the check was dishonored for the reason "Account Closed." Thereafter, petitioner Albenson, through counsel, traced the origin of the dishonored check. From the records of the Securities and Exchange Commission (SEC), Albenson discovered that the president of Guaranteed, the recipient of the unpaid mild steel plates, was one "Eugenio S. Baltao." Upon further inquiry, Albenson was informed by the Ministry of Trade and Industry that E.L. Woodworks, a single proprietorship business, was registered in the name of one "Eugenio Baltao". In addition, upon verification with the drawee bank, Pacific Banking Corporation, Albenson was advised that the signature appearing on the subject check belonged to one "Eugenio Baltao".

After obtaining the foregoing information, Albenson, through counsel, made an extrajudicial demand upon private respondent Eugenio S. Baltao, president of Guaranteed, to replace and/or make good the dishonored check.

Respondent Baltao, through counsel, denied that he issued the check, or that the signature appearing thereon is his. He further alleged that Guaranteed was a defunct entity and hence, could not have transacted business with Albenson.

On February 14, 1983, Albenson filed with the Office of the Provincial Fiscal of Rizal a complaint against Eugenio S. Baltao for violation of Batas Pambansa Bilang 22. Submitted to support said charges was an affidavit of petitioner Benjamin Mendiona, an employee of Albenson. In said affidavit, the above-mentioned circumstances were stated.

It appears, however, that private respondent has a namesake, his son Eugenio Baltao III, who manages a business

establishment, E. L. Woodworks, on the ground floor of Baltao Building, 3267 V. Mapa Street, Sta. Mesa, Manila, the very same business address of Guaranteed.

On September 5, 1983, Assistant Fiscal Ricardo Sumaway filed an information against Eugenio S. Baltao for Violation of Batas Pambansa Bilang 22. In filing said information, Fiscal Sumaway claimed that he had given Eugenio S. Baltao opportunity to submit controverting evidence, but the latter failed to do so and therefore, was deemed to have waived his right.

Respondent Baltao, claiming ignorance of the complaint against him, immediately filed with the Provincial Fiscal of Rizal a motion for reinvestigation, alleging that it was not true that he had been given an opportunity to be heard in the preliminary investigation conducted by Fiscal Sumaway, and that he never had any dealings with Albenson or Benjamin Mendiona, consequently, the check for which he has been accused of having issued without funds was not issued by him and the signature in said check was not his.

On January 30, 1984, Provincial Fiscal Mauro M. Castro of Rizal reversed the finding of Fiscal Sumaway and exonerated respondent Baltao. He also instructed the Trial Fiscal to move for dismissal of the information filed against Eugenio S. Baltao. Fiscal Castro found that the signature in PBC Check No. 136361 is not the signature of Eugenio S. Baltao. He also found that there is no showing in the records of the preliminary investigation that Eugenio S. Baltao actually received notice of the said investigation. Fiscal Castro then castigated Fiscal Sumaway for failing to exercise care and prudence in the performance of his duties, thereby causing injustice to respondent who was not properly notified of the complaint against him and of the requirement to submit his counter evidence.

Because of the alleged unjust filing of a criminal case against him for allegedly issuing a check which bounced in violation of Batas Pambansa Bilang 22 for a measly amount of P2,575.00, respondent Baltao filed before the Regional Trial Court of Quezon City a complaint for damages against herein petitioners Albenson Enterprises, Jesse Yap, its owner, and Benjamin Mendiona, its employee.

In its decision, the lower court observed that "the check is drawn against the account of 'E.L. Woodworks,' not of Guaranteed Industries of which plaintiff used to be President. Guaranteed Industries had been inactive and had ceased to exist as a corporation since 1975. x x x. The possibility is that it was with Gene Baltao or Eugenio Baltao III, a son of plaintiff who had a business on the ground floor of Baltao Building located on V. Mapa Street, that the defendants may have been dealing with. x x x" (Rollo, pp. 41-42).

The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants ordering the latter to pay plaintiff jointly and severally:

1. actual or compensatory damages of P133,350.00;
2. moral damages of P1,000,000.00 (1 million pesos);
3. exemplary damages of P200,000.00;
4. attorney's fees of P100,000.00;
5. costs.

"Defendants' counterclaim against plaintiff and claim for damages against Mercantile Insurance Co. on the bond for the issuance of the writ of attachment at the instance of plaintiff are hereby dismissed for lack of merit." (Rollo, pp. 38-39)

On appeal, respondent court modified the trial court's decision as follows:

"WHEREFORE, the decision appealed from is MODIFIED by reducing the moral damages awarded therein from P1,000,000.00 to P500,000.00 and the attorney's fees from P100,000.00 to P50,000.00, said decision being hereby affirmed in all its other aspects. With costs against appellants." (Rollo, pp. 50-51)

Dissatisfied with the above ruling, petitioners Albenson Enterprises Corp., Jesse Yap, and Benjamin Mendiona filed the instant Petition, alleging that the appellate court erred in:

"1. Concluding that private respondent's cause of action is not one based on malicious prosecution but one for abuse of rights under Article 21 of the Civil Code notwithstanding the fact that the basis of a civil action for malicious prosecution is Article 2219 in relation to Article 21 or Article 2176 of the Civil Code x x x.

"2. Concluding that 'hitting at and in effect maligning (private respondent) with an unjust criminal case was, without more, a plain case of abuse of rights by misdirection and 'was therefore, actionable by itself,' and which 'became inordinately blatant and grossly aggravated when x x x (private respondent) was deprived of his basic right to notice and a fair hearing in the so-called preliminary investigation x x x'

"3. Concluding that petitioner's 'actuations in this case were coldly deliberate and calculated', no evidence having been adduced to support such a sweeping statement.

"4. Holding the petitioner corporation, petitioner Yap and petitioner Mendiona jointly and severally liable without sufficient basis in law and in fact.

"5. Awarding respondents-

5.1. P133,350.00 as actual or compensatory damages, even in the absence of sufficient evidence to show that such was actually suffered.

5.2. P500,000.00 as moral damages considering that the evidence in this connection merely involved private respondent's alleged celebrated status as a businessman, there being no showing that the act complained of adversely affected private respondent's reputation or that it resulted to material loss.

5.3. P200,000.00 as exemplary damages despite the fact that petitioners were duly advised by counsel of their legal recourse.

5.4. P50,000.00 as attorney's fees, no evidence having been adduced to justify such an award" (Rollo, pp. 4-6).

Petitioners contend that the civil case filed in the lower court was one for malicious prosecution. Citing the case of *Madera vs. Lopez* (102 SCRA 700 [1981]), they assert that the absence of malice on their part absolves them from any liability for malicious prosecution. Private respondent, on the other hand, anchored his complaint for Damages on Articles 19, 20, and 21[*] of the Civil Code.

Article 19, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes the primordial limitation on all rights: that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. Although the requirements of each provision is different, these three (3) articles are all related to each other. As the eminent Civilist Senator Arturo Tolentino puts it: "With this article (Article 21), combined with articles 19 and 20, the scope of our law on civil wrongs has been very greatly broadened; it has become much more supple and adaptable than the Anglo-American law on torts. It is now difficult to conceive of any malevolent exercise of a right which could not

be checked by the application of these articles" (Tolentino, 1 Civil Code of the Philippines 72).

There is however, no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case. (*Globe Mackay Cable and Radio Corporation vs. Court of Appeals*, 176 SCRA 778 [1989]).

The elements of an abuse of right under Article 19 are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. Article 20 speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction (Tolentino, *supra*, p. 71). Thus, anyone who, whether willfully or negligently, in the exercise of his legal right or duty, causes damage to another, shall indemnify his victim for injuries suffered thereby. Article 21 deals with acts *contra bonus mores*, and has the following elements: 1) There is an act which is legal; 2) but which is contrary to morals, good custom, public order, or public policy; 3) and it is done with intent to injure.

Thus, under any of these three (3) provisions of law, an act which causes injury to another may be made the basis for an award of damages.

There is a common element under Articles 19 and 21, and that is, the act must be intentional. However, Article 20 does not distinguish: the act may be done either "willfully", or "negligently". The trial court as well as the respondent appellate court mistakenly lumped these three (3) articles together, and cited the same as the bases for the award of damages in the civil complaint filed against petitioners, thus:

"With the foregoing legal provisions (Articles 19, 20, and 21) in focus, there is not much difficulty in ascertaining the means by which appellants' first assigned error should be resolved, given the admitted fact that when there was an attempt to collect the amount of P2,575.00, the defendants were explicitly warned that plaintiff Eugenio S. Baltao is not the Eugenio Baltao defendants had been dealing with (*supra*, p. 5). When the defendants nevertheless insisted and persisted in filing a case -- a criminal case no less -- against plaintiff, said defendants ran afoul of the legal provisions (Articles 19, 20, and 21 of the Civil Code) cited by the lower court and heretofore quoted (*supra*)."

Defendants, not having been paid the amount of P2,575.00, certainly had the right to complain. But that right is limited by certain constraints. Beyond that limit is the area of excess, of abuse of rights." (*Rollo*, pp. 44-45).

Assuming, *arguendo*, that all the three (3) articles, together and not independently of each one, could be validly made the bases for an award of damages based on the principle of "abuse of right", under the circumstances, We see no cogent reason for such an award of damages to be made in favor of private respondent.

Certainly, petitioners could not be said to have violated the aforestated principle of abuse of right. What prompted petitioners to file the case for violation of Batas Pambansa Bilang 22 against private respondent was their failure to collect the amount of P2,575.00 due on a bounced check which they honestly believed was issued to them by private respondent. Petitioners had conducted inquiries regarding the origin of the check, and yielded the following results: from the records of the Securities and Exchange Commission, it was discovered that the President of Guaranteed (the recipient of the unpaid mild steel plates), was one "Eugenio S. Baltao"; an inquiry with the Ministry of Trade and Industry revealed that E.L. Woodworks, against whose account the check was drawn, was registered in the name of one "Eugenio Baltao"; verification with the drawee bank, the Pacific Banking Corporation, revealed that the signature appearing on the check belonged to one "Eugenio Baltao".

In a letter dated December 16, 1983, counsel for petitioners wrote private respondent demanding that he make good the amount of the check. Counsel for private respondent wrote back and denied, among others, that private

respondent ever transacted business with Albenson Enterprises Corporation; that he ever issued the check in question. Private respondent's counsel even went further: he made a warning to defendants to check the veracity of their claim. It is pivotal to note at this juncture that in this same letter, if indeed private respondent wanted to clear himself from the baseless accusation made against his person, he should have made mention of the fact that there are three (3) persons with the same name, i.e.: Eugenio Baltao Sr., Eugenio S. Baltao, Jr. (private respondent), and Eugenio Baltao III (private respondent's son, who as it turned out later, was the issuer of the check). He, however, failed to do this. The last two Baltaos were doing business in the same building - Baltao Building - located at 3267 V. Mapa Street, Sta. Mesa, Manila. The mild steel plates were ordered in the name of Guaranteed of which respondent Eugenio S. Baltao is the president and delivered to Guaranteed at Baltao building. Thus, petitioners had every reason to believe that the Eugenio Baltao who issued the bouncing check is respondent Eugenio S. Baltao when their counsel wrote respondent to make good the amount of the check and upon refusal, filed the complaint for violation of BP Blg. 22.

Private respondent, however, did nothing to clarify the case of mistaken identity at first hand. Instead, private respondent waited in ambush and thereafter pounced on the hapless petitioners at a time he thought was propitious by filing an action for damages. The Court will not countenance this devious scheme.

The criminal complaint filed against private respondent after the latter refused to make good the amount of the bouncing check despite demand was a sincere attempt on the part of petitioners to find the best possible means by which they could collect the sum of money due them. A person who has not been paid an obligation owed to him will naturally seek ways to compel the debtor to pay him. It was normal for petitioners to find means to make the issuer of the check pay the amount thereof. In the absence of a wrongful act or omission or of fraud or bad faith, moral damages cannot be awarded and that the adverse result of an action does not per se make the action wrongful and subject the actor to the payment of damages, for the law could not have meant to impose a penalty on the right to litigate (*Rubio vs. Court of Appeals*, 141 SCRA 488 [1986]).

In the case at bar, private respondent does not deny that the mild steel plates were ordered by and delivered to Guaranteed at Baltao building and as part payment thereof, the bouncing check was issued by one Eugenio Baltao. Neither had private respondent conveyed to petitioner that there are two Eugenio Baltaos conducting business in the same building - he and his son Eugenio Baltao III. Considering that Guaranteed, which received the goods in payment of which the bouncing check was issued is owned by respondent, petitioner acted in good faith and probable cause in filing the complaint before the provincial fiscal.

To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution. (*Manila Gas Corporation vs. Court of Appeals*, 100 SCRA 602 [1980]). Still, private respondent argues that liability under Articles 19, 20, and 21 of the Civil Code is so encompassing that it likewise includes liability for damages for malicious prosecution under Article 2219 (8). True, a civil action for damages for malicious prosecution is allowed under the New Civil Code, more specifically Articles 19, 20, 26, 29, 32, 33, 35, and 2219 (8) thereof. In order that such a case can prosper, however, the following three (3) elements must be present, to wit: (1) The fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action was finally terminated with an acquittal; (2) That in bringing the action, the prosecutor acted without probable cause; (3) The prosecutor was actuated or impelled by legal malice (*Lao vs. Court of Appeals*, 199 SCRA 58, [1991]).

Thus, a party injured by the filing of a court case against him, even if he is later on absolved, may file a case for damages grounded either on the principle of abuse of rights, or on malicious prosecution. As earlier stated, a

complaint for damages based on malicious prosecution will prosper only if the three (3) elements aforecited are shown to exist. In the case at bar, the second and third elements were not shown to exist. It is well-settled that one cannot be held liable for maliciously instituting a prosecution where one has acted with probable cause. "Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. In other words, a suit will lie only in cases where a legal prosecution has been carried on without probable cause. The reason for this rule is that it would be a very great discouragement to public justice, if prosecutors, who had tolerable ground of suspicion, were liable to be sued at law when their indictment miscarried" (Que vs. Intermediate Appellate Court, 169 SCRA 137 [1989]).

The presence of probable cause signifies, as a legal consequence, the absence of malice. In the instant case, it is evident that petitioners were not motivated by malicious intent or by sinister design to unduly harass private respondent, but only by a well-founded anxiety to protect their rights when they filed the criminal complaint against private respondent.

"To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, that it was initiated deliberately by the defendant knowing that his charges were false and groundless. Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution. Proof and motive that the institution of the action was prompted by a sinister design to vex and humiliate a person must be clearly and preponderantly established to entitle the victims to damages" (Ibid.).

In the case at bar, there is no proof of a sinister design on the part of petitioners to vex or humiliate private respondent by instituting the criminal case against him. While petitioners may have been negligent to some extent in determining the liability of private respondent for the dishonored check, the same is not so gross or reckless as to amount to bad faith warranting an award of damages.

The root of the controversy in this case is founded on a case of mistaken identity. It is possible that with a more assiduous investigation, petitioners would have eventually discovered that private respondent Eugenio S. Baltao is not the "Eugenio Baltao" responsible for the dishonored check. However, the record shows that petitioners did exert considerable effort in order to determine the liability of private respondent. Their investigation pointed to private respondent as the "Eugenio Baltao" who issued and signed the dishonored check as the president of the debtor-corporation Guaranteed Enterprises. Their error in proceeding against the wrong individual was obviously in the nature of an innocent mistake, and cannot be characterized as having been committed in bad faith. This error could have been discovered if respondent had submitted his counter-affidavit before investigating fiscal Sumaway and was immediately rectified by Provincial Fiscal Mauro Castro upon discovery thereof, i.e., during the reinvestigation resulting in the dismissal of the complaint.

Furthermore, the adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate, such right is so precious that moral damages may not be charged on those who may even exercise it erroneously. And an adverse decision does not ipso facto justify the award of attorney's fees to the winning party (Garcia vs. Gonzales, 183 SCRA 72 [1990]).

Thus, an award of damages and attorney's fees is unwarranted where the action was filed in good faith. If damage results from a person's exercising his legal rights, it is *damnum absque injuria* (Ilocos Norte Electric Company vs. Court of Appeals, 179 SCRA 5 [1989]).

Coming now to the claim of private respondent for actual or compensatory damages, the records show that the

same was based solely on his allegations without proof to substantiate the same. He did not present proof of the cost of the medical treatment which he claimed to have undergone as a result of the nervous breakdown he suffered, nor did he present proof of the actual loss to his business caused by the unjust litigation against him. In determining actual damages, the court cannot rely on speculation, conjectures or guesswork as to the amount. Without the actual proof of loss, the award of actual damages becomes erroneous (*Guilatco vs. City of Dagupan*, 171 SCRA 382 [1989]).

Actual and compensatory damages are those recoverable because of pecuniary loss -- in business, trade, property, profession, job or occupation -- and the same must be proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given (*Rubio vs. Court of Appeals*, 141 SCRA 488 [1986]). For these reasons, it was gravely erroneous for respondent court to have affirmed the award of actual damages in favor of private respondent in the absence of proof thereof.

Where there is no evidence of the other party having acted in wanton, fraudulent or reckless, or oppressive manner, neither may exemplary damages be awarded (*Dee Hua Liong Electrical Equipment Corporation vs. Reyes*, 145 SCRA 488 [1986]).

As to the award of attorney's fees, it is well-settled that the same is the exception rather than the general rule. Needless to say, the award of attorney's fees must be disallowed where the award of exemplary damages is eliminated (Article 2208, Civil Code; *Agustin vs. Court of Appeals*, 186 SCRA 375 [1990]). Moreover, in view of the fact that there was no malicious prosecution against private respondent, attorney's fees cannot be awarded him on that ground.

In the final analysis, there is no proof or showing that petitioners acted maliciously or in bad faith in the filing of the case against private respondent. Consequently, in the absence of proof of fraud and bad faith committed by petitioners, they cannot be held liable for damages (*Escritor, Jr. vs. Intermediate Appellate Court*, 155 SCRA 577 [1987]). No damages can be awarded in the instant case, whether based on the principle of abuse of rights, or for malicious prosecution. The questioned judgment in the instant case attests to the propensity of trial judges to award damages without basis. Lower courts are hereby cautioned anew against awarding unconscionable sums as damages without bases therefor.

WHEREFORE, the petition is GRANTED and the decision of the Court of Appeals in C.A. G.R. C.V. No. 14948 dated May 13, 1989, is hereby REVERSED and SET ASIDE. Costs against respondent Baltao.
SO ORDERED.

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

[*] "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

"Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

"Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

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